Workers Compensation
Appeals Tribunal

Annotated Statute

Workers' Compensation Appeals Tribunal

ANNOTATED STATUTE

(Consolidated as of May 1, 1986)

Tribunal d'appel des accidents du travail

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WORKERS' COMPENSATION APPEALS TRIBUNAL

ANNOTATED STATUTE

The Annotated Statute lists significant decisions of the Workers' Compensation Appeals Tribunal under the sections of the Workers' Compensation Act R.S.O. 1980 c.539 as amended to which they refer. It is updated weekly. The Tribunal has been established to hear and determine appeals under the Workers' Compensation Act respecting entitlement to compensation as well as appeals of assessments or penalties under the Act. The Tribunal also determines the effect of the Act on workers' rights to take civil actions against their employers.

Tribunal decisions are available for reference at major public libraries and county law libraries across Ontario. They may also be obtained by contacting the Research and Publications Department of the Tribunal directly. Decisions are assigned a number at the time when they are heard by a Hearing Panel. Therefore decision numbers are not related to the time a decision is issued and decisions are not issued sequentially. Sometimes a Hearing Panel will reach an interim decision rather than a final decision pending the provision of further information. Such a decision will be clearly labelled "Interim Decision". When a final decision is reached, it will be labelled "Final Decision". Applications to the Appeals Tribunal for the right to commence an action in the courts to recover damages under section 15 of the Act may result in an "Interim Ruling" which will be referred to by the names of the parties as well as by a number. Final decisions on section 15 applications also bear the parties' names and a number.

A Keyword Index of Decisions and an Annotated Workers' Compensation Act are also available from the Legal Research and Publications Department of the Tribunal.

WORKERS' COMPENSATION APPEALS TRIBUNAL

ANNOTATED WORKERS' COMPENSATION ACT, R.S.O. c.539 as amended.

Consolidated as of May 1, 1986

Key decisions which contribute new information to a specific subject are marked with an asterisk in the Annotated Statute. The following decisions have been newly asterisked in this issue: 15, 53.

S.1(1)(a)

Decision No. 4

Worker's evidence that his twisted knee did not result from horseplay accepted and compensation awarded. A non-participating victim of horseplay, however, would be entitled to compensation.

Decision No. 14

A worker suffered aphonia when a security door opened unexpectedly and an alarm sounded. She was awarded compensation as this was an injury resulting from an accident as defined in s.1(1)(a)(ii).

Decision No. 19

After 25 years of replacing hydropoles' crossarms by bumping them with his shoulders, a hydro linesperson was diagnosed as having rotator cuff tears necessitating surgery. He was awarded temporary total compensation as an accident in s.1(1)(a)(iii) had occurred and medical evidence showed a relation between the injuries and activity.

Decision No. 26

A worker operating a printing press and lifting printed material claimed to have developed a hernia after a period of heavy work. Although the criteria in WCB Directive #14 (Guidelines for the adjudication of hernia claims) were not met, the Tribunal found that the hernia was caused by an accident as defined in s.1(1)(a)(iii). Temporary total compensation was awarded for time off from work due to the hernia and corrective surgery.

Decision No. 56

The Tribunal found that the workers' shoulder injury was caused by an industrial accident and was not related to a fall after the accident.

NOTE: THIS DOCUMENT IS UPDATED WEEKLY

Decision No. 58

The Tribunal applied the WCB's policy concerning when strenuous work or awkward positions will constitute a disablement arising out of and in the course of employment to award compensation to a worker who suffered a right inguinal hernia when he stood up after squatting at work. The Tribunal awarded compensation under s.3(1) on the basis that the act of standing up aggravated a pre-existing condition which caused the hernia.

Decision No. 62

A welder who had to weld while kneeling in a crouched position due to lack of protective equipment and a confined work space suffered back pain. He was awarded compensation because his injuries arose from an accident as defined in s.1(1)(a)(iii).

*Decision No. 69

The Tribunal held that the expanded definition of accident in s.1(1)(a)(iii) was intended to provide coverage to workers who did not identify a specific incident as the cause of their disability, but were able to establish a causal relationship between the work being done and the disability.

Decision No. 129

The Tribunal found that although the worker had given both specific and general causes for his back injury, this was not fabrication but more likely a misinterpretation of the workers' answers.

Decision No. 136

The Tribunal refused compensation for a wrist disability since the evidence did not show the wrist injury arose in the course of employment.

S.1(1)(z)

Decision No. 154

The employer argued that the claimant was not a worker within the meaning of the pre-1985 Act because he was not on the company payroll. He was paid a 10% commission and received a company car and gas allowance. The Tribunal concluded the claimant was a worker under the organization test of workers, which infers an employer-worker relationship if the person performs duties that are an integral part of the employer's business. A police report alleging that the worker failed to obey traffic signals did not constitute wilful misconduct as the requisite intent was not present.

S.3(1)

Decision No. 10

Wrist surgery in 1984 was necessitated by a wrist fracture suffered in an accident at work in 1979. Compensation was awarded for the worker's lay-off in 1984 for surgery.

Decision No. 25

Although the worker did not report the accident to his employer for 11 days, the Tribunal granted compensation for a back injury. The Tribunal indicated that it must examine all the circumstances of a case to determine entitlement to compensation.

Decision No. 29

The worker used her right arm to perform repetitive movements with a meat slicer since 1973 and developed tennis elbow in 1978. She was awarded compensation for time off work due to her right elbow disability in 1984 because the evidence indicated that the injury arose out of the course of her employment.

Decision No. 58

See under s.1(1)(a).

Decision No. 70

A steelworker experienced back pain in May, 1983 when bending over to turn bent steel billets on a roller line. The pain increased and in 1984 a disc protrusion was diagnosed. Temporary benefits were awarded for time off work as the injury occurred over time due to his strenuous job.

Decision No. 79

The worker hurt her ankle in 1980 but was able to resume working without any lost time. She claimed that she had been in pain for 4 years but had been afraid to report this to her foreman and doctor. The Tribunal refused compensation for the later disability due to the inconsistencies in the worker's testimony. The Tribunal held that the work accident did not cause the later disability.

*Decision No. 150

A worker was entitled to compensation when he broke his ankle getting out of a car on his employer's parking lot. He was reporting to work to carry out duties for his employer and was therefore in the course of employment upon arriving at the parking lot. This activity was incidental to his employment and lead to a presumption that the accident arose out of the course of employment under s.3(3). He was also entitled to compensation under Board Directive 21 on employer-owned parking lot injuries.

S.3(3) (Old S.3(2))

*Decision No. 150

See under s.3(1).

S.3(7) (old S.3(1))

Decision No. 4

See under s.1(1)(a).

Decision No. 120

The worker was employed to drive cars to the employer's loading area. He was hurt when he went through a space between parked cars and hit another car. The Tribunal held that based on WCB policy the worker's act was not serious and wilful misconduct as defined in s.3(1). He was therefore not disentitled to benefits.

Decision No. 154

See under s.1(1)(z).

Decision No. 161

The worker wore ear plugs contaminated with oil residue from his hands which caused an inflammation of his external ear canal. The Tribunal rejected the employer's argument that the carelessness of the worker should deny him compensation as fault is not an appropriate consideration in a no-fault system. The Tribunal found the injury arose out of and in the course of employment.

S.5

Decision No. 31

The worker claimed that he developed pain in his lower back from bending and stretching while lifting materials from a hoist onto a roof in 1982. The Tribunal found that the accident aggravated a pre-existing degenerative disc condition and lead to a period of disability which ended in May, 1983 when the worker's condition reverted to its pre-accident stage. The worker's claim for compensation after December, 1983 was denied.

S.15

Decision No. 83

The Tribunal found that the plaintiff/worker had been injured in the course of his employment and rejected a s.15 application by the defendant in a civil action to have the plaintiff's benefits rescinded.

Decision No. 91

The Tribunal found the worker had been injured in the course of his employment and granted a s.15 application which took away the worker's right to sue a Schedule 1 employer.

Mattabi Mines Limited (Interim Ruling)

Four employees of a mining company injured in an accident involving a bus chartered by the company brought s.15 applications to determine their rights to sue. The employer appealed a WCB award of benefits to a fifth employee injured in the same accident. The Tribunal held that the s.15 applications and employer appeal should be heard together to minimize costs and to avoid inconsistency. All other workers injured in the same accident were given notice of the proceedings, although they were not parties, due to their substantial interest in the outcome.

S.21

Decision No. 125

The employer applied for a medical examination of the worker under s.21(a). The parties agreed on a medical examination before the hearing was held so the appeal was withdrawn.

S.26

Decision No. 16

The worker requested commutation to purchase a mobile home and pay off debts. The Tribunal refused the request as it was not rehabilitative in nature or in the worker's long term interest.

S.40(1) (old S.39)

Decision No. 5

The onus principle was applied in favour of a worker with a right shoulder girdle sprain and she was found totally disabled. Her disablement in 1984 was found to have resulted from a 1982 injury.

*Decision No. 17

A worker experienced back pain while bending when putting anodes on a conveyor. Later when moving wood at home, the pain returned and he was off work for five months. Full compensation and medical benefits were awarded as the second injury was a direct result of the first at work.

Decision No. 30

The Tribunal found that based on the balance of probabilities the medical evidence indicated that the worker was totally temporarily disabled due to a back injury.

Decision No. 35

A worker was denied compensation for time off work one month after she strained her back while lifting a box. Medical evidence did not support a relationship between the accident and later pain.

Decision No. 43

The Tribunal refused compensation when the worker's low back pain was related to his pre-existing disc degeneration and not to the work accident.

Decision No. 98

The worker was a truck driver for a roofing company who suffered a mechanical back injury in 1982 when loading propane tanks onto his truck. The Tribunal found that the worker still had a partial disability on February 3, 1984, arising from the 1982 accident and awarded full compensation. Compensation was not reduced under old s.41(1)(b) because (1) the WCB did not make a rehabilitation program available, (2) there was no suitable work available, and (3) he was available for work.

S.40(2)(b) (Old S.41(1)(b))

Decision No. 1

A worker whose finger was amputated by a punch press and who mistakenly believed that light work was unavailable without her doctor's instructions was not disqualified by s.41(1)(b)(ii) from full compensation.

(Interim) Decision No. 2

A worker with a back injury who believed herself to be totally disabled was found partially disabled by the Tribunal. Decision reserved pending further hearing on availability for work and reduction of benefits under s.41(1)(b)(ii).

Decision No. 9

A worker struck in the left chest by a box was diagnosed as having a pulled shoulder muscle but later suffered pain in his hand, arm, chest and shoulder. The Tribunal found him partially disabled although he insisted he was totally disabled. The worker abandoned his search for work but was held to be not unavailable under s.41(1)(b)(ii) as there was no chance of finding suitable work. Referred back to WCB to award compensation. Decision No. 2 (when available) may assist re availability issue when worker declares self totally disabled.

Decision No. 98

See under s.40(1).

Decision No. 134

The Tribunal found that the worker had made reasonable efforts to find suitable employment and awarded him full benefits.

Interim Decision No. 171

Materials were submitted at the hearing in addition to Case Description Materials. There was no agreement between worker and employer representative regarding additional materials. The Case Direction Panel convened to determine their admissibility and to define issues. The Panel concluded that the Appeals Adjudicator had found the worker to be entitled to benefits on the basis of an aggravation of a compensable injury but compensation was not awarded as the worker was not disabled beyond the percentage in his prior permanent disability award and he was disqualified under (old) section 41(1)(b). The parties were directed to work with Tribunal Counsel in deciding what should be included in the Case Description Materials.

S.52

Decision No. 48

A worker was reimbursed for costs of chiropractic treatment for two work related back injuries as the treatment was medically reasonable, recommended by his doctor, and was the only definitive treatment he was receiving.

S.81

(Interim) Decision No. 24

Five unsuccessful attempts were made to serve a worker with a summons issued by the Tribunal. The Tribunal held that it had the power to summon and enforce the attendance of the worker, and to require workers or employers to testify and be cross-examined. The Tribunal may draw inferences in relation to factual issues if a claimant wilfully refuses to attend and he or she has been given notice of the Tribunal's right to do so. After a review of caselaw and evidence, the Tribunal rejected the employer's argument that a reasonable apprehension of bias was created by the receipt by Panel members of Tribunal Counsel Office submissions prior to the hearing.

S.86g

Decision No. 47

See under s.122.

Decision No. 76

The Tribunal refused to hear an employer's appeal of issues arising from a low back injury because the issues had not been internally appealed within the WCB. To do otherwise would be unfair to the worker.

Decision No. 171

See under s.40(2)(b).

S.86(h)(4)

Interim Decision No. 20

The Tribunal adjourned a hearing until a medical examination was done. The examination was needed to determine whether the injury was related to a work accident or a pre-existing condition.

S.86(m)

Decision No. 24

See under s.81.

S.122

Decision No. 47

After reviewing new evidence the Tribunal held that a worker met the criteria in the WCB Directive for hearing loss compensation. The issues of benefits and which employer should be charged were referred back to the WCB under s.86g as WCB procedures had not been exhausted.

No Sections Cited

Decision No. 7

The Tribunal denied benefits for the worker's recuperation after surgery to repair a dislocated shoulder when the worker had been advised by his doctor to have his shoulder repaired before the work injury. The Tribunal limited compensation to the time needed for the worker's shoulder to reach the pre-accident condition.

Decision No. 8

Surgery on a worker's dislocated left shoulder was necessitated by a work accident alone and not by prior non-work related injuries. Temporary total benefits were awarded during the worker's lay-off for surgery.

Decision No. 11

A worker's compensation for a fall from a ladder resulting in neck, right hip and back injuries was discontinued because evidence indicated that he had recovered.

Decision No. 13

Although the worker had a pre-existing arthritic condition, an accident in which a filing cabinet fell on her thighs accelerated the onset of arthritis in her hips and created a need for hip replacement surgery. Compensation was awarded for her lay-off for surgery.

*Decision No. 15

A worker's representative was granted an adjournment due to a timetable conflict because the Tribunal was still in its early stages and so that the requirements of natural justice would be satisfied. The Tribunal established guidelines for considering future adjournments. They will only be granted in exceptional cases which will not generally include representatives' timetable conflicts.

Decision No. 22

The Tribunal applied the WCB Policy Directive #19 and found the worker's hearing loss was caused by his exposure to industrial noise.

Decision No. 23

The Tribunal found that the worker's injury arose in the course of his employment and awarded benefits even though there was a 2 1/2 day delay in reporting the accident.

Decision No. 27

An employer and worker disputed whether the worker was in an accident with a trailer and whether his finger, thumb, shoulder and neck were injured. Compensation was awarded as the Tribunal accepted the worker's evidence of the accident and his injuries.

Decision No. 28

The Tribunal refused benefits when the evidence did not show a causal relationship between the worker's accident and the worker's pain which occurred 8 months after the accident.

(Interim) Decision No. 41

The Tribunal awarded benefits for a muscle strain which occurred when the worker's ladder slipped and the worker had to grab a window sill. The Tribunal directed the Tribunal Counsel Office to obtain further medical information as to whether the worker's heart attack which occurred one month after the accident was compensable.

Decision No. 50

The Tribunal held that a worker who suffered mainly psychogenic pain in her arm and shoulder after a fall at work was temporarily partially disabled and entitled to compensation.

*Decision No. 53

In January, 1983, the worker suffered a compensable injury to his left knee. In November, 1983, he suffered a torn lateral meniscus of his left knee while pushing a car out of a snow bank on the employer's parking lot. The Tribunal found the original compensable injury was a significant cause of the second disability because it was unlikely the worker would have suffered the second injury had it not been for the original one.

Decision No. 55

A painful lump developed after a worker fell and hit his head on a cabinet. It was removed and diagnosed as a benign tumor composed of fat cells. Compensation was awarded because the evidence showed that the injury was probably caused by the accident.

Decision No. 65

The Tribunal found that the worker's varicose vein surgery in 1984 was caused by a work related accident in 1978.

Decision No. 67

The Tribunal applied the benefit of the doubt principle and awarded total compensation when the worker's medical reports were contradictory as to whether he was totally or partially disabled.

Decision No. 74

The Tribunal found that the worker's lost time was related to a compensable accident and not to the worker's pre-existing arthritic condition.

Decision No. 81

A worker injured his back at work in July, 1984 and twisted it again in 1985 at home. Compensation was awarded for time off work following the second injury as evidence indicated that it was probably caused by the work accident.

Decision No. 85

A worker dislocated his shoulder three times in non-work accidents and then once at work. Compensation was awarded for surgery as the shoulder was stable before the work accident and surgery would not have been necessary but for it.

Decision No. 88

The Tribunal found that a bricklayer suffered a compensable accident when some brick particles entered his eye. This caused punctate keratopathy in the eye which was prolonged by other non-compensable eye problems. The matter was referred to the WCB to determine the duration and type of benefits.

Decision No. 92

The worker strained his right shoulder muscles at work in 1968 and 1969. Compensation was denied for shoulder surgery in 1979 due to evidence of congenital problems and other non-work related injuries, and because medical evidence did not link the need for surgery to the accidents at work.

Decision No. 102

After an electric drill fell on a boatcleaner's toe in 1966, X-rays did not reveal a fracture. Pain continued and in 1982 surgery was recommended to fuse the toe joint. The surgery was compensable as it was necessitated by the 1966 accident.

Decision No. 140

The worker could not establish a relationship between his current back disability and a 1969 accident. Since the treatment was minor and there was no continuity of medical treatment, the Tribunal concluded the disability was due to a pre-existing condition.

Decision No. 160

The worker hurt his shoulder in 3 compensable accidents in 1975, 1977 and 1978, and was advised to avoid overhead work. The worker was compensated for time off work in 1984 due to shoulder pain because the original accidents made his shoulder prone to further disability.

Workers' Compensation Appeals Tribunal
Tribunal d'appel des accidents du travail

ANNOTATED STATUTE

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APRIL 18 - NOVEMBER 24, 1987

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WORKERS' COMPENSATION APPEALS TRIBUNAL
ANNOTATED STATUTE
VOLUME 2(2)
FINAL CONSOLIDATION

APRIL 18, 1987 TO NOVEMBER 24, 1987

The consolidation of the Annotated Statute lists published decisions of the Workers' Compensation Appeals Tribunal, issued from April 18, 1987, to November 24, 1987, under the sections of the Workers' Compensation Act R.S.O. 1980 c.539 and its Regulations, as amended, to which they refer. Decisions which refer to other legislation are listed at the back of this index under the heading "Other Statutes Considered". Significant decisions which have been selected for publication in our subscription service and/or the Decision Digest are asterisked and summarized. Keyword index classifiers appear for other decisions. Decisions distributed from December 1985 to December 31, 1986 are consolidated in Volume 1 and decisions distributed from January 1, 1987, to April 17, 1987, are consolidated in Volume 2, Number 1, available from the Tribunal's Information Centre.

Indexes to the Tribunal's decisions are updated monthly and may be obtained free of charge. The following other indexes to the Tribunal's decisions are also available:

Keyword Index: An alphabetical subject word index to published decisions.

Numerical Index: Published decisions are listed numerically by decision number.

These publications are prepared for purposes of convenience only. For accurate reference, recourse should be had to the original full-text versions of the decisions. Tribunal decisions are available for reference at the Tribunal's library, major public libraries, and country and district law libraries across Ontario. Copies of decisions are available at $2.00 per copy from the Information centre of the Tribunal, or a subscription to selected significant decisions may be purchased for a fee of $80.00 per year.

Inquiries concerning the Tribunal's indexes, decisions and other publications should be addressed to: Information Centre, Workers' Compensation Appeals Tribunal, 505 University Avenue, 7th Floor, Toronto, M5G 1X4. Tel.: (416) 598-4638. Fax No.: (416)979-8324.

TRIBUNAL SYSTEM OF DECISION NUMBERING

Where Does The Numbering Come From?

A decision number is assigned at the time a hearing or application occurs. These numbers are assigned automatically, in numerical order, and are used regardless of the date of the decision. Because of this, a higher number decision often is released before a lower number.

Why do some recent decisions have "/87" after them?

Given the large volume of appeals to the Tribunal, it is impractical to continue numbering indefinitely. Therefore, effective January 1, 1987, when decision numbers are assigned, they will indicate the year in which the hearing took place. So, all hearings in 1987 will have "/87" after the number, all hearings in 1988, "/88", etc.

Any decisions without a year indication are those heard in the first 15 months of the Tribunal's operation; that is October 31, 1985 to December 31, 1986.

What do the letters after the numbers mean?

The vast majority of cases heard by the Tribunal involve a one-step process in which the part or parties attend a hearing and a decision is issued when a final decision is made by the Hearing Panel.

In some cases, however, a further decision on the same, or related issue may be required. The Tribunal will therefore add a letter suffix to the decision number to indicate that it may be part of a two (or more) step process. These suffixes designate the following:

A	Addendum
I	Interim
L	Leave to Appeal
LM	Leave and Merits
R	Reconsideration

As an example, a Tribunal Panel made a decision on a case in Decision No. 72. Following the decision, the Tribunal was requested to reconsider its decision and, as a result, a hearing took place resulting in Decision no. 72R. Decision No. 72R decided that a further hearing, by a different Panel of the Tribunal, should take place. That Panel's ruling resulted in Decision No. 72R2.

What about Leaves to Appeal?

The Tribunal has decided that, in most cases, an application for leave to appeal a decision of the former Appeal Board of the WCB (under section 86o of the Workers' Compensation Act) will be a two step process. A hearing will be convened to decide if leave to appeal should be granted, and the decision on leave will have the suffix "L".

If leave is granted, a hearing on the merits of the case will then take place and the resulting decision number will be the same as the leave decision, but without the "L".

In the rare case that a leave application and the merits of the case are heard together, the decision number will indicate "LM" meaning Leave and Merits.

There will be some minor variations from the above system, mostly with respect to pre-1987 hearings.

JUDICIAL REVIEWS

The Divisional Court of Ontario has dismissed an application for judicial review of Tribunal Decision no. 241. In Halco Inc. v. Workers' Compensation Appeals Tribunal and Yves Bourcier (Court File No. 477/86), an unreported decision dated February 11, 1987, the Court found no basis for a suggestion that the circumstances raised a reasonable apprehension of bias.

The Divisional Court of Ontario has dismissed an application for judicial review of Tribunal Decision No. 391. In Hare et al. v. Workers' Compensation Appeals Tribunal and Toulman (Court file No. 11211/86), an unreported decision dated November 3, 1987, the Court found that the applicant had failed to show that the decision of the Tribunal was so patently unreasonable that its construction could not be reasonably supported.

The Division Court of Ontario has dismissed an application for judicial review of Tribunal Decision No. 449. See Re Tankovic and Workers' Compensation Appeals Tribunal (Court file no. 523/87), dated November 30, 1987.

For further information, contact the Court or the Tribunal Library.

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This volume of the Annotated Statute contains decisions issued from April 18, 1987 to November 24, 1987. Final Consolidations of Volume 1 containing decisions distributed from December 1985 to December 31, 1986 and Volume 2(1) containing decisions distributed from January 1, 1987, to April 17, 1987, are available from the Information Centre.

Significant decisions which have been selected for publication in our subscription service and/or the Decision Digest are marked with an asterisk in the Annotated Statute.

The date appearing after each decision number indicates when the decision was signed.

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Section 1(1)(a)

26/87* 21/09/87
See under s.3(3)

34/87* 04/09/87
The worker appealed a decision of the Appeals Adjudicator denying benefits after May 1982 for a low back disability which the worker claimed was related to a compensable accident suffered in 1980. The worker, now 62 years old, bent forward slightly and reached out to put a plate on a table at home in May 1982 when she suffered a severe lower back pain. The worker had pre-existing degenerative disc disease, even prior to the 1980 compensable accident. The majority of the Panel found that the 1982 incident was an aggravation of the underlying degenerative disc disease and was not related to the 1980 aggravation. Focusing merely on the pre-1980 condition does not address the possibility that the condition might not have remained static in the absence of the 1980 accident. The compensable accident was not a significant contributing factor to the ongoing disability. The appeal was denied. A dissenting Panel Member was of the view that the compensable accident was not just a soft tissue injury which resolved itself, but rather an injury which caused damage to the spinal process and continued to be a significant contributing factor to the ongoing disability.

162/87* 10/07/87
The worker appealed a decision of the Hearings Officer denying entitlement for fibromyositis of the shoulder for which the worker was off work from February 1985 to June 1985. The worker had a previous compensable shoulder condition in 1981. Considering lack of continuity of complaint and treatment, the Tribunal found that the disability in 1985 was not related to the previous condition. However, the worker did suffer a disablement from an additional job requirement that started around November 1984 when the worker was required to install an additional bolt from above shoulder height. The worker was temporarily partially disabled by the disablement. On the evidence suitable work was not available. The worker was entitled to full benefits. The appeal was allowed.

261/87 21/05/87
Arising out of and in the course of employment - Accident - Specific incident - Delay - Notice (of accident) - Back conditions.

353/87* 27/10/87
See under s.3(1)

508/87* 24/07/87
The worker appealed a WCB Hearings Officer decisions denying compensation benefits on the ground there had been no accident as defined by the Act. The

Tribunal had to consider whether pain suffered by the worker in the back and groin were disabilities arising out of and in the course of employment within the meaning of s.1(1)(a)(iii) so as to entitle the worker to compensation benefits for lay-offs which occurred in 1984 and 1985. As a preliminary matter, the Tribunal considered whether the inclusion of previous Tribunal decisions not referred to in the Case Description materials in the employer's written submission, violated the three-week rule. The Tribunal determined that the three-week rule applied only to materials which would be considered evidence and did not restrict the Panel from hearing legal argument. In determining whether the worker's injuries constituted injury by accident for the purposes of compensation, the Tribunal noted that it was not necessary to identify a specific incident to establish that the disablement arose out of and in the course of employment. It is sufficient that the disablement have some causal relationship with the work being performed. This causal connection is satisfied if the evidence shows that the worker's employment made a significant contribution to the occurrence of the injury. The Tribunal dismissed the worker's appeal on the basis that the medical evidence failed to establish that the employment activity made a significant contribution to the disablement.

557* 25/02/87
Denial of entitlement for back and neck disabilities. Worker was sewing machine operator who developed a gradual onset of symptoms in 1981, approximately 10 months after beginning work with accident employer. Worker suffered from pre-existing degenerative disc disease and "psychic tension". Tribunal found that employment made a significant contribution to the disability by aggravating her pre-existing condition. Medical evidence established that the physical position she was required to assume, a cool draught in the workplace and constant reaching and twisting all affected the worker's back. The worker suffered a disablement. Although the worker delayed more than one year before submitting her claim, the Tribunal accepted her explanation and found that the claim was just. The appeal was allowed.

561/87 30/07/87
See under s.3(1)

571/87 04/11/87
See under s.3(1)

598 23/07/87
Recurrences - Credibility - Continuity (of complaint) - Back conditions (lower back) - Investigation by Tribunal.

678 03/04/87
Accident - Arising out of in the course of employment - Credibility - Evidence Witness - Delay - Medical report - Organic evidence of injury, none - Back conditions (lower back).

906 21/04/87
Accident - Chance event - Disablement - Significant contribution - Arising out of in the course of employment - Specific incident - Repetitive movement - Notice (of accident) - Continuity (of complaint) -Back conditions (adhesion over nerve root) - Cashier.

Section 1(1)(a)(ii)

461L 29/04/87
Leave to appeal (substantial new evidence) [medical report] - Leave to appeal (good reason to doubt correctness) [failure to properly apply Act] - Chance event - Disablement - Arising out of and in the course of employment - Presumptions - Specific incident - Aggravation - Hernia (incisional).

Section 1(1)(a)(iii)

57/87* 19/05/87
The employer appealed a decision of the Appeals Adjudicator denying SIEF relief for the worker's tennis elbow. The worker had been employed by the employer for approximately three years as an assembly-line butcher. Prior to that he had worked as a butcher in small shops for over 30 years. Benefits had been granted on the basis of disablement. The employer submitted that the disability developed gradually over more than 30 years from his work as a butcher. The Tribunal determined that the employer was not entitled to SIEF relief. Medical literature indicated that epicondylitis developed both spontaneously after repeated movement and gradually over many years. There was no evidence of any underlying condition and the work as an assembly-line butcher was different from that in small shops. Had the work been substantially the same, it may have been perhaps appropriate to grant SIEF relief along the lines provided in s. 122(5) for cost-sharing in industrial disease cases. The appeal was denied.

132/87 22/06/87
Disablement - Arising out of and in the course of employment - Continuity (of treatment) - Back conditions (sprains and strains) - Lifting.

331/87L 14/07/87
See under s.86o.

456/87 05/10/87
Disablement - Back conditions (lower back) - Steelworker.

461L 29/04/87
See under s.1(1)(a)(ii).
636/87 13/11/87
See under s.20(5)

651/87* 03/07/87
The worker appealed a decision of the Appeals Adjudicator denying entitlement for a left arm and shoulder disability diagnosed as overuse syndrome. The worker's job at a dial machine on an assembly line required repetitive movement. The Tribunal found that the worker suffered a disablement related to her work. It was unnecessary to find a specific or unusual incident or accident before a worker can claim entitlement for disablement. The work was a significant contributing factor to the disablement, considering the nature of the work activity, the medical reports and the fact that symptoms decreased when the worker returned to a different job. The appeal was allowed.

663/87* 05/08/87
The worker appealed the decision of the Hearings Officer denying him entitlement to benefits. The worker, who was employed as a crane driver, had begun experiencing pain in his lower left leg analogous to shin splints. The worker attributed his condition to constant braking while driving the crane. While the doctor examining the worker was not able to entirely rule out the possibility of another reason for the worker's condition, the Tribunal determined that on the basis of the evidence as a whole, it was more probable than not that the worker suffered from posterior tibial stress syndrome which was causally related to his work as a crane operator. The fact that the medical diagnosis was unclear was not a basis for the denial of benefits where the evidence had established a reasonable relationship between the work performed and the disability. The Tribunal decided therefore that the type of constant raising of the leg to exert pressure on the brake did cause the worker to suffer an injury by accident within the meaning of section 1(1)(a)(iii) of the Act. The appeal was allowed.

679/87 30/10/87
See under s.3(1)

704 25/08/87
Disablement - Arising out of and in the course of employment - Presumptions - Vibrations - Repetitive movement - Carpal tunnel - Mining.

712* 10/09/87
The worker appealed a decision of the Appeals Adjudicator denying entitlement for osteoarthritis in her hands. The worker was a 50-year-old sewing machine operator for an automobile manufacturer who claimed entitlement for periods in 1978 and 1979 and continuously from 1984. The worker's job involved constant repetitive movement of her hands and fingers, often sewing pieces of large heavy material. The Tribunal found that the worker's job was not the sole cause of the development of her condition but did significantly contribute to her disablement from osteoarthritis. The appeal was allowed.

754 05/05/87
See under s.40(2)(b)

757/87* 01/10/87
The worker appealed a decision of the Hearings Officer denying entitlement for bilateral knee disability. The worker, a 33 year old auto industry worker, was employed in the spray deadner booth. He claimed disablement caused by accumulation of deadner on the floor which formed a very irregular and difficult walking surface. The medical evidence revealed no organic disability. However, the worker did complain persistently and attended regular physiotherapy. The Tribunal found the worker's description of symptoms to be credible and supported by co-workers. The worker suffered a disablement arising out of and in the course of employment. The appeal was allowed.

766L* 16/12/86
See under s.86o(3)(b)

872 10/04/87
Disablement - Significant contribution - Repetitive movement - Location (of injury) [subsequent incident outside work] Shoulder condition (muscle spasms) - Back conditions (muscle spasms) - Investigation by Tribunal - Jurisdiction (powers of Tribunal) [referrals to WCB with directions] - Food industry.

877* 01/10/87
The worker appealed a decision of the Appeal Board, pursuant to leave previously granted, denying entitlement for cervical spondylosis, and a decision of the Appeals Adjudicator denying entitlement for continuing lower back disability. In a preliminary matter, the Tribunal agreed to hear the

appeal from the Adjudicator even though the worker had not given notice of the appeal previously, since the employer was out of business and not interested in the proceedings. The Tribunal found that neither the lower back condition nor the neck condition were related to a compensable accident in 1974, considering lack of continuity of complaint and treatment. However, the neck condition did constitute a disablement arising from the worker's job as a fork lift driver, due to the vibrations from the fork lift, repetitive neck motion and unbalanced posture. Medical literature did not establish vibrations as aggravating degenerative disc disease, but also did not exclude the possibility. The appeal was allowed.

931/87 30/10/87
Disablement - Credibility - Back conditions (lower back) - Food industry.

Section 1(1)(f)

137/87* 22/01/87
The widow of a deceased worker appealed from a decision of the Hearings Officer denying entitlement to dependency benefits. The widow married her husband in 1948 and separated in 1980. He died in 1984. She received no support from him since separation and was not provided for in his will. She commenced proceedings under the Succession Law Reform Act and settled for one-third of the estate. The Tribunal reviewed extensively similar legislation and decisions from other jurisdictions. The Tribunal concluded that use of the word "means" rather than "includes" in the definition of "dependant" restricted the scope of the section. The obligation to decide cases on the real merits and justice did not provide for extension of the Act to cases not covered by the wording of the Act. Accepting the case of New Monckton Collieries Ltd. v. Keeling, [1911] A.C. 648, the Tribunal found that it was relevant to consider whether there was a reasonable probability or fair probability that a claimant would assert rights to support, even if those rights had not been asserted at the time of the worker's death. In this case, the worker may have had a continuing obligation to support his wife. However, the widow did not assert rights to support and there was no reasonable or even fair probability that she would have enforced those rights. The widow was not a dependant within the meaning of old s.1(1)(f). The appeal was denied.

Section 1(1)(g) (repealed)

137/87* 22/08/87
See under s. 1(1)(f)

Section 1(1)(i)

137/87* 22/08/87
See under s. 1(1)(f)

330* 07/05/87
(Bujacz v. Chouvier et al.)
See under s.15.

422/871* 28/07/87
(CVL Inc. et al v. Jennings et al)
See under s.15

547* 16/10/87
See under s.11

912* 07/10/87
(Ontario Motor Sales Ltd. et al v. Lachance et al)
See under s.15

Section 3

783* 04/05/87
The worker appealed a decision of the Appeals Adjudicator denying entitlement for a bilateral hand disability. The worker was a baker who claimed she developed the hand disability from extensive handling of frozen dough. The Tribunal concluded that the worker suffered a disablement arising out of and in the course of her employment. Although doctors could not agree on a diagnosis, the Tribunal accepted the diagnosis of the Board doctor of severe vasospastic disease. There was no family history or pre-existing condition to suggest that this was an inherited trait. Further, the worker's condition improved when she was not handling frozen products. The work was a significant contributing factor in the onset of the disability. The appeal was allowed.

Section 3(1)

26/87* 21/09/87
See under s.3(3)

313* 13/10/87
(Desimone et al v. Mola)
See under s.15

Section 1(1)(k)

298 06/07/87
(Bouius v. Van Houten)
See under s.15.

304* 28/04/87
(Routhier et al v. Vatour)
See under s.15

Section 1(1)(n)

877* 01/10/87
See under s.1(1)(a)(iii)

1014/87L 06/11/87
Leave to appeal (good reason to doubt correctness) - Vibrations - White finger disease.

Section 1(1)(o)

912* 07/10/87
(Ontario Motor Sales Ltd. et al v. Lachance et al)
See under s.15

Section 1(1)(z)

56/87* 26/03/87
(Simcoe County Board of Education et al. v. Barlow)
See under s.15.

270/87* 09/04/87
(Dzulynski v. White et al.)
See under s.15.

298 06/07/87
(Bouius v. Van Houten)
See under s.15.

304* 28/04/87
(Routhier et al v. Vatour)
See under s.15

353/87* 27/10/87
The worker appealed the decision of the Hearings Officer denying him entitlement to benefits for an ankle disability on the basis that it had not been established that an accident had occurred. At the start of the hearing, the worker's representative was permitted to introduce as additional evidence product sheets. The employer's subsequent request that she be provided with a transcript of hearing proceedings to prepare her post-hearing submissions was denied on the basis that ordering a transcript is the responsibility of the parties, not of the Hearing Panel. Regarding the substantive issues, the worker suffered a sudden unexpected onset of pain at work, but did not know what caused it. The majority of the Panel found that it was probable that two factors - the work and its environment as one, and a pre-existing leg condition as the other, were equally responsible for the injury by accident sustained by the worker. The work was a significant contributing factor. The worker sustained an injury by accident arising out of and in the course of his employment and was therefore entitled to compensation for his ankle injury. The appeal was allowed. A dissenting Panel member found that insufficient causal relationship had been established between the employment and the worker's injury.

369/87* 10/09/87
The worker appealed a decision of the Hearings Officer denying entitlement for a fractured ankle suffered when the worker slipped on the ice in the parking lot of a shopping centre. The worker worked in a grocery store located in the shopping centre. She was proceeding to work along her usual route at the time of the accident. The parking lot was owned by the owner of the shopping centre, however, it was designated as part of the common areas and maintenance was shared by all tenants, including the worker's employer. Board policy provided for entitlement only for injuries in employer owned parking lots. The Tribunal compared the Board's policy regarding parking lots with the policy regarding multi-story buildings that provides for entitlement for injuries occurring in the common areas of the building. The majority of the Panel concluded that there was a distinction in that the office building was primarily used by office workers while the shopping centre parking lot was primarily public in nature and the worker is being exposed to risks which are substantially imposed by members of the public. The accident did not arise out of and in the course of employment. The appeal was denied. The dissenting Panel member was of the view that the accident arose out of employment and that the WCB policy alone could not rebut the presumption in old s.3(2), and further, that court decisions have found that the shopping centre and parking lot were private property.

480 03/04/87
Accident - Recurrences - Pre-existing condition (degenerative disc disease) - Delay - Lifestyle - Credibility - Back conditions (sprains and strains).

511/87 15/06/87
Disablement - Arising out of and in the course of employment - Disability (temporary) - Credibility - Shoulder condition (strain).

516/87* 11/06/87
The worker appealed a decision of the Hearings Officer denying entitlement for injuries resulting from a fight. The Tribunal noted that the Hearing had been adjourned twice because subpoenas could not be served on essential witnesses, through no fault of the worker. The worker was a truck driver who did not get along with a co-worker. The worker drove into the truck loading line at a quarry and parked two trucks ahead of the co-worker, pursuant to an agreement with a different co-worker to pick up coffee for him on the way. Although this was fairly common practice, the practice also called for the worker to ask other drivers if it was alright to move ahead in line. The co-worker came yelling at the worker and a fight ensued. The Tribunal found that the worker had provoked the co-worker by cutting the co-worker off on the road previously and by failing to explain why he went ahead in the loading line. The fight did not result solely over work, but rather from ongoing tension over non-work matters. The worker was at the very least a co-aggressor, obviously participated in the fight and was not an innocent bystander. The employer did not condone the jockeying activity. The worker did not come within the exception to the provision in the Board guidelines that provide generally that fighting is not compensable. The incident did not arise out of and in the course of employment. The appeal was denied.

557* 25/02/87
See under s.1(1)(a)

561/87 30/07/87
Accident - Arising out of and in the course of employment - Notice (of accident) - Delay - Strains and sprains.

571/87 04/11/87
Accident - Credibility - Delay - Back conditions (lower back).

597/87* 28/08/87
The worker appealed a decision of the Hearings Officer denying entitlement for an accident. During his lunch break, the worker left his place of employment and walked across the grass to the edge of the curb, intending to cross the street to get a cup of coffee, when he was struck by the mirror of a passing truck. The Tribunal decided that the accident did not arise out of and in the course of employment. The accident occurred on city-owned property over which the employer had no effective control and which was open to the public.

Workers were not required to use the area for any purpose related to their employment. The worker left the employer's premises during his unpaid lunch for reasons not connected to his employment. The appeal was denied.

679/87 30/10/87
Accident - Credibility - Delay - Notice (of accident) - Back conditions (lower back).

757/87* 01/10/87
See under s.1(1)(a)(iii)

872 10/04/87
See under s.1(1)(a)(iii).

877* 01/10/87
See under s.1(1)(a)(iii)

Section 3(3)

26/87* 21/09/87
The worker appealed a decision of the Appeals Adjudicator denying entitlement for a low back disability. The worker suffered a sudden onset of pain while putting on a snow boot after termination of his duties but before completing his shift. The parties agreed that the incident occurred in the course of employment. The Tribunal has recognized sudden unexpected injuries as being personal injuries by accident. Although the injury happened at work, it could have easily have occurred at home. The activity was not incidental to any of his work activities. The presumption in s. 3(3) would apply, for instance, where the Tribunal could not decide whether an employment activity medically caused a particular injury. However, the question, as in this case, of what connection the activity had to employment, was a legal question which did not involve the presumption. On the evidence, the injury did not arise out of employment. The appeal was denied.

38/87L 30/10/87
Leave to appeal (good reason to doubt correctness) - Presumptions - Benefit of the doubt - Delay.

73/87* 28/05/87
The worker appealed a decision of the Appeals Adjudicator denying entitlement for a low back disability. The worker was a sewing machine operator who

suffered a sudden onset of pain in the regular course of her employment. Following Decision No. 72, the Tribunal found that the sudden onset of pain without an external chance event constituted a personal injury by accident. Since the accident occurred in the course of employment, the presumption provision in old s.3(2) applied. Considering the worker's testimony and the medical evidence, the Tribunal found that the presumption had been rebutted. The Tribunal rejected the worker's evidence of an operating problem with the sewing machine as being recent elaboration designed to strengthen the worker's case. Based on the medical reports, the Tribunal determined that the worker suffered from pre-existing degenerative disc disease and that there was no causal link between the job requirements and the personal injury. The employment did not make a significant contribution to the occurrence of the injury. The injury did not arise out of employment. The appeal was denied. A minority opinion would have found that there was not sufficient evidence to rebut the presumption.

353/87* 27/10/87
See under s.3(1)

369/87* 10/09/87
See under s.3(1)

383/87L 23/04/87
Leave to appeal (good reason to doubt correctness) - Disablement - Chance event - Presumptions - Credibility - Delay.

461L 29/04/87
See under s.1(1)(a)(ii).

678 03/04/87
See under s.1(1)(a).

704 25/08/87
See under s.1(1)(a)(iii)

Section 3(4)

38/87L 30/10/87
See under s.3(3)

246/87 01/06/87
Multiple causes - Benefit of the doubt - Pre-existing condition (cervical spondylosis) - Medical report - Continuity (of complaint) - Shoulder condition (strain).

280* 01/10/87
The worker's widow appealed a decision of the Appeals Adjudicator denying survivor's benefits. The worker was a 49 year old fire fighter who died as a result of acute pulmonary edema on September 13, 1982 while taking a stress test. He had a pre-existing heart condition and was a cigarette smoker. On August 17, 1982, the worker was exposed to an unknown quantity of chemical fumes while fighting a laboratory fire. The majority of the Panel found that the widow was entitled to benefits. Pulmonary edema could result from heart attack or coronary insufficiency, but under certain circumstances could also result from ingestion of chemical gases. The major contributing factor to the worker's death was the pre-existing heart condition which was exacerbated by the stress test. However, the Panel had to determine not merely the most significant factor but whether employment was a significant contributing factor. A significant contributing factor is a factor of considerable effect or importance or one which added to the worker's pre-existing condition in a material way to establish a causal connection. There was a significant change in the worker's condition after the August 17th fire. The evidence as to the probable cause of the pulmonary edema was approximately equal in weight. Applying the benefit of the doubt, the fire was a significant contributing factor to the worker's death. The appeal was allowed. A dissenting Panel member concluded that a speculative possibility of a relationship was not enough and that a significant causal relationship had not been established.

307 19/06/87
Consequences of injury - Benefit of the doubt - Disability (temporary) - Disability (permanent) - Jurisdiction (powers of Tribunal) [referrals to WCB with directions] - Head (headaches) - Investigation by Tribunal.

373* 04/03/87
The worker appealed a decision of the Appeals Adjudicator denying entitlement for injuries suffered during the worker's unpaid lunch break. The worker was eating her lunch outside at a picnic table on the employer's premises. She tripped while chasing seagulls away from the table. The Tribunal found that the injury arose during the course of employment in accordance with Board guidelines providing for entitlement when the worker was injured by reason of the ordinary hazards of the employer's premises. The seagulls were present routinely and the worker's initiative in chasing them did not remove her from the course of employment. The presumption clause in s. 3(4) applied. Since the Tribunal considered eating lunch to be incidental to employment, ordinary

activity around the place where lunch was being eaten was also incidental to employment. The worker was entitled to compensation. The appeal was allowed

462L* 26/05/87
The worker applied for leave to appeal a decision of the Appeal Board denying entitlement for a cervical disability and granting a 15% pension for a back disability. The Tribunal found that a report from a chiropractor did not constitute substantial new evidence since other similar evidence was available. However, there was good reason to doubt the correctness of the Appeal Board decision. The Appeal Board accepted that the worker's neck problem was caused by air conditioning and therefore not compensable, but may have overlooked the relation in time of the neck symptoms to the accident. Further, the Appeal Board did not appear to consider whether the neck problem was caused by air conditioning at the Rehabilitation Centre and, if so, whether it would be compensable. Regarding the pension, the Appeal Board accepted a report that 15% was inadequate and also accepted the pension assessment of 15%. The Appeal Board did not make the necessary inquiry under s. 3(4) as to whether this evidence was approximately equal in weight. Leave to appeal was granted.

497/87L* 26/05/87
See under 86o(3).

525/87 19/06/87
Consequences of injury - Intervening causes - Benefit of the doubt - Continuity (of complaint) - Continuity (of treatment) - Back conditions (lower back).

653/87L 08/07/87
Leave to appeal (good reason to doubt correctness) - Hearing loss.

678 03/04/87
See under s.1(1)(a).

704 25/08/87
See under 1(1)(a)(iii)

756L* 05/10/87
See under s.86o(2)

766L* 16/12/86
See under s.86o(3)(b)

775* 30/09/87
The worker appealed a decision of the Hearings Officer denying entitlement for a low back disability. The worker, a 53 year old cashier, developed the disability after the introduction of a "ring and bag" check out system. The Tribunal found that the worker's pre-existing asymptomatic degenerative disc disease became symptomatic after the introduction of the "ring and bag" system. Medical literature established that increased lifting, such as that undertaken by the worker, would put additional stress on the worker's back. In the circumstances, the Tribunal found that the worker suffered a disablement arising out of and in the course of employment. The appeal was allowed.

855/87 20/11/87
Significant contribution - Benefit of the doubt - Arm condition (strain).

Section 3(7)

330* 07/05/87
(Bujacz v. Chouvier et al.)
See under s.15.

516/87* 11/06/87
See under s.3(1).

Section 8

53/87* 15/05/87
(Welland County General Hospital v. Ontario Nurses Association)
See under s.15

Section 8(1)

729/87* 14/10/87
(University of W. Ontario et al v. Killeen et al)
See under s.15

Section 8(4)

725* 07/04/87
(Robinson et al. v. Clark et al.)
See under s.15.

820* 19/10/87
(Velocci et al v. WTB INC et al)
See under s.15

Section 8(9)

46/87* 30/04/87
(Murphy et al v. Conway)
See under s.15.

56/87* 26/03/87
(Simcoe County Board of Education et al. v. Barlow)
See under s.15.

77/87 31/08/87
(Charterways Transportation Ltd. et al v. Stefan)
See under s.15

226/87* 02/04/87
(Bestway Stone Ltd. et al. v. Blumberg)
See under s.15.

228/87* 02/04/87
(Stevensville Concrete Floors Ltd. et al. v. Paul)
See under s. 15.

270/87* 09/04/87
(Dzulynski v. White et al.)
See under s.15.

276/87 08/04/87
(Rosella et al. v. Wake et al.)
See under s.15.

298 06/07/87
(Bouius v. Van Houten)
See under s.15.

299* 22/09/87
(Pearce et al v. Sorensen et al; Pearce et al v. White)
See under s.15

304* 28/04/87
(Routhier et al v. Vatour)
See under s.15

313* 13/10/87
(Desimone et al v. Mola)
See under s.15

320* 16/04/87
(510504 Ontario Ltd. et al. v. Brancato et al.)
See under s.15.

389* 22/05/87
(Trepanier et al. v. Latimer et al.)
See under s.15.

422/87I* 28/07/87
(CVL Inc. et al v. Jennings et al)
See under s.15

436* 29/04/87
(Rocha et al. v. Yanez et al.)
See under s.15.

479/87I* 13/05/87
(Ropp v. Walkey)
See under s.15.

479/87* 30/07/87
(Ropp v. Walkey)
See under s.15

517/87I* 26/05/87
(Bartoshuk et al. v. Perkins)
See under s.15.

553* 09/06/87
(Kryskow v. Sen et al.)
See under s.15.

560* 22/04/87
(van der Zalm et al. v. Dobson et al.)
See under s.15.

725* 07/04/87
(Robinson et al. v. Clark et al.)
See under s.15.

741* 05/03/87
(Hellam et al. v. Rosser et al.)
See under s.15.

820* 19/10/87
(Velocci et al v. WTB INC et al)
See under s.15

912* 07/10/87
(Ontario Motor Sales Ltd. et al v. Lachance et al)
See under s.15

961/87 13/11/87
(Rogers et al v. Ontario Hydro et al)
See under s.8(11)

Section 8(10)

56/87* 26/03/87
(Simcoe County Board of Education et al. v. Barlow)
See under s.15.

298 06/07/87
(Bouius v. Van Houten)
See under s.15.

299* 22/09/87
(Pearce et al v. Sorensen et al; Pearce et al v. White)
See under s.15

422/87I* 28/07/87
(CVL Inc. et al v. Jennings et al)
See under s.15

479/87I* 13/05/87
(Ropp v. Walkey)
See under s.15.

479/87* 30/07/87
(Ropp v. Walkey)
See under s.15

725* 07/04/87
(Robinson et al. v. Clark et al.)
See under s.15.

Section 8(11)

299* 22/09/87
(Pearce et al v. Sorensen et al; Pearce et al v. White)
See under s.15

313* 13/10/87
(Desimone et al v. Mola)
See under s.15

422/87I* 28/07/87
(CVL Inc. et al v. Jennings et al)
See under s.15

436* 29/04/87
(Rocha et al. v. Yanez et al.)
See under s.15.

479/87* 30/07/87
(Ropp v. Walkey)
See under s.15

725* 07/04/87
(Robinson et al. v. Clark et al.)
See under s.15.

820* 19/10/87
(Velocci et al v. WTB INC et al)
See under s.15

912* 07/10/87
(Ontario Motor Sales Ltd. et al v. Lachance et al)
See under s.15

961/87 13/11/87
(Rogers et al v. Ontario Hydro et al)
Section 15 application - Agreement (parties) - Schedule 2 employer - Apportionment (of liability).

Section 11

228/87* 02/04/87
(Stevensville Concrete Floors Ltd. et al. v. Paul)
See under s.15.

547* 16/10/87
The worker appealed the decision of the Appeals Adjudicator confirming the basis used by the WCB to calculate the worker's benefits. The worker applied for personal coverage prior to amendments to the Act in 1975, but the accident took place after the amendments. Prior to amendments the legislation provided that in the case of executive officers claiming personal coverage, benefits should be calculated on the basis of stated earnings recorded on the application. The worker claimed that his benefits should be calculated on the basis of his actual earnings of $15,000 rather than on the basis of stated earnings of $8,000. The Tribunal found that the matter had to be determined on the basis of the Act as amended and that the effect of the 1975 amendments was to provide that a deemed worker was to be treated the same as a regular worker for the purpose of benefits. It was not necessary to determine whether the worker was an executive officer deemed to be a worker. Where the person was deemed to be a worker under section 11 of the Act, there was no basis for differentiating deemed employees from other employees for the purpose of the calculation of benefits. The Tribunal found therefore that the worker was entitled to have his benefits calculated on the basis of his actual rather than estimated earnings. The worker's appeal was allowed.

560* 22/04/87
(van der Zalm et al. v. Dobson et al.)
See under s.15.

637/87* 21/09/87
The worker appealed a decision of the Appeals Adjudicator denying him entitlement to compensation and health care benefits. The Tribunal considered whether the worker's low back disability, requiring lost time and surgery

subsequent to September 1983, resulted from his self-employment from 1969 to 1980 or his employment with the accident employer in 1983. The Tribunal found that the worker's back disability more probably than not resulted from his self-employment. The worker had intermittent personal coverage during his period of self-employment. The Tribunal found that it was Board policy that in order to be eligible for benefits, personal coverage must have been in effect on the date of the accident or date of the onset of the disability. As there was no onset of disability which prevented the worker from performing his duties in the periods of time for which the worker had personal coverage, the worker was not entitled to compensation. The appeal was denied.

911/87 13/11/87
Significant contribution - Aggravation - Pre-existing condition (arthritis) - Obesity - Knee condition (arthritis) - Osteoarthritis.

958/87 05/11/87
(Klich et al v. di Maria et al)
See under s.15

Section 14

298 06/07/87
(Bouius v. Van Houten)
See under s.15.

304* 28/04/87
(Routhier et al v. Vatour)
See under s.15

560* 22/04/87
(van der Zalm et al. v. Dobson et al.)
See under s.15.

729/87* 14/10/87
(University of W. Ontario et al v. Killeen et al)
See under s.15

961/87 13/11/87
(Rogers et al v. Ontario Hydro et al)
See under s.8(11)

Section 15

46/87* 30/04/87
(Murphy et al. v. Conway)
The defendants in a civil case applied to determine whether the plaintiff's right of action was taken away. The plaintiff was a bicycle courier who was injured in a collision with a truck. The issues were whether the driver of the truck was in the course of his employment, whether the plaintiff was an employee of a courier company or an independent operator and whether the courier company was a Schedule 1 employer. The Tribunal found that the truck driver was performing his duties at the time of the accident and was in the course of employment. Materials provided by the Board on the issue of whether the courier company was a Schedule 1 employer also addressed the issue of whether the plaintiff was a worker. However, the Board's opinion was not determinative. Considering organization and control, the plaintiff was a worker. At the time of the accident, the courier company had not applied for coverage under the Act. Using an end-product approach, the Board classes bicycle couriers under Class 20 para. 1(i) - carting, teaming and trucking. The Tribunal determined that it had the same jurisdiction on a s.15 application as it had on an appeal and therefore had the same jurisdiction as the Board to determine industry classifications. Considering the Board's special expertise in this area, the Tribunal ought to interfere only in situations where the Board has acted unreasonably or has relied on an unsupportable definition. It was open to the board to expand the trucking industry classification to include delivery services, although the Tribunal did have some reservations about the Board's approach of adding an industry by way of interpretation rather than by regulation. The courier company was a Schedule 1 employer even though it had not registered with the Board. The plaintiff's right of action was taken away.

53/87* 15/05/87
(Welland County General Hospital v. Ontario Nurses Association)
An employer hospital applied under s. 15 to determine whether a nurse's right to grieve under a collective agreement was taken away. The nurse was injured when kicked by a patient. She did not apply for workers' compensation. The WCB would not consider benefits because she had not received medical attention. When the hospital refused sick pay benefits under the collective agreement, the matter went to arbitration. The arbitrator determined that, since the nurse was not entitled to workers' compensation, she was entitled to benefits under the agreement. The Tribunal determined that there was no "action" within s. 15 of the Act. According to the Interpretation Act, the definition of action in the Courts of Justice Act would apply unless it was inconsistent with the intent, object or context of the Workers' Compensation Act. It was not inconsistent to find that a worker had right to bring an action against the employer in certain circumstances but that the union would have the right to pursue the workers' grievance under the collective agreement. A worker could not waive compensation benefits under terms of a collective agreement, but there was nothing stopping a union and employer from requesting additional benefits. The workers' compensation scheme and the collective agreement scheme can co-exist. Grievance arbitration was not a type of action contemplated by the Courts of Justice Act and therefore not an action within s. 15 of the Workers' Compensation Act. The hospital was not a party to an action.

56/87* 26/03/87
(Simcoe County Board of Education et al. v. Barlow)
The defendants in a civil case applied to determine whether the plaintiff's right of action was taken away. The plaintiff was a grade 13 student at a school who was injured while operating computer equipment at the school. She was paid on an hourly basis for preparing timetables. She submitted statements to the school and was paid periodically by cheque from the School Board without deductions. The issue was whether the plaintiff was a workman within s. 1(1)(x) of the 1970 act or whether she was a casual worker or independent contractor. On the evidence, the Tribunal found no basis to separate the school from the School Board and that the plaintiff contracted with the school board. Although she had a great deal of flexibility under the contract, she had to complete specific projects with deadlines. There was significant control and supervision by school staff. In addition, the work was an integral part of the business of the school and the School Board. Therefore, the plaintiff was not a casual worker. Further, considering the degree of control and her integration into the organization of the business under the organization test, the plaintiff was not an independent contractor. The plaintiff's right of action against the School Board and her co-worker was taken away. The plaintiff's right against the computer manufacturer and one of its workers for negligent manufacture and repair of equipment was also taken away. The Tribunal did not deal with the potential application of s. 8(10)

since the parties were not relying on the section and since the plaintiff was of the view that the manufacturer was not the supplier of the equipment.

77/87 31/08/87
(Charterways Transportation Ltd. et al v. Stefan)
Section 15 application - Employment (in the course of) - Travelling (injury in the course of) - Motor vehicle cases.

226/87* 02/04/87
(Bestway Stone Ltd. et al. v. Blumberg)
The defendants in a civil action applied to determine whether the plaintiff's right of action was taken away. The issue was whether the plaintiff was in the course of employment at the time of a motor vehicle accident. The plaintiff was a banquet coordinator who had to be present at catering functions at various locations and worked odd hours as a result. When the accident occurred the plaintiff was driving a company car on his way to his apartment where he was planning to change into his uniform, spend 45 minutes at leisure and then proceed to a banquet. The Tribunal concluded that the worker was engaged in an activity that was intended to further the employer's business interests. He was not going home for purely personal reasons. His activity was in discharge, although indirectly, of his duty to his employer. The plaintiff's right of action was taken away.

228/87* 02/04/87
(Stevensville Concrete Floors Ltd. et al. v. Paul)
The defendants in a civil case applied to determine whether the plaintiff's right of action was taken away. The issue was whether the defendant worker was in the course of employment at the time of the motor vehicle accident while driving his defendant employer's van. The worker usually drove his motorcycle to the employer's residence, then got a ride with the employer to the job site. On this one occasion, the motorcycle had broken down and the employer loaned the van to the worker overnight so that the worker could get to the job site the next morning. The accident occurred on the way to the job site. The van contained equipment and the key to the job site. The worker was not paid travelling time. The Tribunal found that the employer's intention in lending the van was to enable the worker to reach the job site. It was incidental that the equipment and key were in the van. The purpose was not to provide a direct benefit to the employer. The Tribunal concluded that the worker was not in the course of employment, therefore the plaintiff's right of action was not taken away.

270/87* 09/04/87
(Dzulynski v. White et al.)
The defendant in a civil action applied to determine whether the plaintiff's right of action was taken away. The plaintiff was a residential in a building

owned by the defendant. The parties had an oral agreement whereby the tenant received a rebate of part of his rent for cleaning hallways and occasionally helping with garbage pickup. The plaintiff fell down a ventilation shaft while looking for vandals. The plaintiff was a worker within s. 1(1)(z) since, although he was a casual worker, he was employed for the purposes of the employer's business. On the evidence, the plaintiff was not in the course of employment since security service was not part of the contractual agreement. The plaintiff's right of action was not taken away.

276/87 08/04/87
(Rosella et al. v. Wake et al.)
Section 15 application - Employment (in the course of) - Travelling (injury in the course of) - Motor vehicle cases - Distinct departure test - Action (derivative).

298 06/07/87
(Bouius v. Van Houten)
Section 15 application - Executive officer - Employer - Worker - Action (derivative) - Leasing company - Parties (agreement) - Investigation by Tribunal.

299* 22/09/87
(Pearce et al v. Sorensen et al; Pearce et al v. White)
The defendants in two civil cases applied to determine whether the plaintiffs' right of action was taken away. The plaintiffs were dependents of Sorensen and Miller who died as a result of a motor vehicle accident while returning from an out-of-town assignment. The defendant Pearce was employed by Unique, and was driving a tractor-trailer, of which the trailer was owned by Transport International and leased by Concord and of which the tractor was owned by Concord. In a preliminary matter the Tribunal refused to allow an affidavit by Pearce, who was in penitentiary, that did not comply with the three week rule since the defendants delayed in taking prompt and effective action. On the merits, the Tribunal made four findings. First, Sorensen and Miller were workers rather than independent contractors, considering that they worked exclusively for one company, that their duties were an integral part of the company's business and that their own efficiency could not influence their remuneration a profit. As workers injured while travelling, they were in the course of employment. Second, Pearce was a long distance truck driver who had deviated from his most direct route to make a stop at home and was returning to his route when the accident occurred. The deviation was not substantially different from stopping to eat on a long trip and was therefore reasonably incidental to his employment. Thus Pearce was in the course of employment. The plaintiffs' right of action against Pearce was taken away. Third, Concord was a leasing company. Since it did not have a Public Commercial Vehicle licence, it required the ongoing services of Unique, which supplied the drivers. Unique was a different corporate entity, and in fact, supplied drivers to other clients as well. In the circumstances, Concord did not supply the driver.

Thus s. 8(10) applied to Concord (and to Transport International which only supplied the trailer), so that they are subject to civil suit. Fourth, pursuant to s. 8(11), Concord and Transport International would only be liable for damages related to their negligence, if any.

304* 28/04/87
(Routhier et al v. Vatour)
Routhier, a defendant in a civil case, applied to determine whether the plaintiff's right of action was taken away. The defendant was a drywall installer who incorporated. He was a director, president, sole shareholder and sole full-time employee of the company. His wife, who was the only other director and the vice-president, took no part in corporate decisions or business operations. The plaintiff was injured in a construction accident in 1983 while employed by the company. To arrive at a decision on the real merits and justice of the case, the Tribunal pierced the corporate veil and determined that the defendant was the employer of the plaintiff. The Act applied even though the defendant was an executive officer. The Tribunal distinguished Berger v Willowdale AMC 41 OR (2d) 89 on the basis that it dealt with a substantial corporation of approximately 35 permanent employees. Although it had a sole shareholder, the other employees could carry on the business if that shareholder were to withdraw. By contrast, in this case the defendant was, in effect, the corporation. The Tribunal also considered the history of the legislation that suggested that the exclusion of executive officers was intended to deal with coverage or eligibility for benefits; that according to Berger an executive officer may owe a duty of care at common law to an employee; and that the definition of employer is not exhaustive. The right of action against the defendant Routhier was taken away.

313* 13/10/87
(Desimone et al v. Mola)
The defendants in a civil case applied to determine whether the plaintiff's right of action was taken away. The issue for the Tribunal was whether the plaintiff worker was in the course of employment while returning to his home in Mississauga from a job in Hamilton. The plaintiff was an electrician who was involved in an accident while driving a van owned by his employer. The plaintiff testified that he did not get paid for the driving time although he was paid for the gas. In finding that the plaintiff was in the course of his employment the Tribunal noted that the plaintiff was travelling solely for employment reasons and that the travelling was a necessary component of getting the job done. The Tribunal further noted that the worker had the employer's truck solely for business purposes and the worker was under an obligation to return the vehicle to the employer. Finally, the Tribunal stated that an application under section 15 does not require the Tribunal to determine whether the worker has a right to compensation and may be limited to the question of whether the Act takes away the right to an action or limits the right to recover damages. The Tribunal found that the Act barred the plaintiff from taking action against the defendants.

320* 16/04/87
(510504 Ontario Ltd. et al. v. Brancato et al.)
The defendants in a civil case applied to determine whether the plaintiff's right of action was taken away. The issue was whether the defendant driver was a worker of the defendant company or an independent operator at the time of a motor vehicle accident. The company was a courier service. Although it attempted to treat its drivers as independent operators, the defendant driver was treated somewhat differently. He drove a company vehicle, earned a base salary plus commissions if in excess of salary and had deductions of income tax, CPP, and UI from his remuneration. He worked during stipulated hours, and although he was not subject to specific control as to how he performed his work, he was subject to direction from the dispatch office. The driver was an employee in the course of his employment. The plaintiff's right of action was taken away, as was the right of action of the plaintiff's wife under the Family Law Reform Act.

330* 07/05/87
(Bujacz v. Chouvier et al.)
The Plaintiff in a civil case applied to determine whether his right of action was taken away. The plaintiff seriously injured his hand while using a buzz saw. At the time he was living in the defendant's home where the defendant carried on a wood supply business. On the evidence, the Tribunal found that the plaintiff received room and board and occasional cash remuneration in exchange for performing work. The first time the plaintiff stayed with the defendants was because he was a friend of the defendant's son. However, this time the plaintiff was asked to come and help out during the busy season. Although there was not strict supervision of the plaintiff's work, he was given specific tasks and there was a certain amount of control over his work. Therefore, the plaintiff was an employee. The plaintiff did not often use the buzz saw but he was in the course of his employment, considering the nature of the defendant's business. The plaintiff's right of action was taken away. Even if the accident was caused by the plaintiff's serious and wilful misconduct, the plaintiff was entitled to compensation since he suffered serious disablement within old s. 3(1)(b) leading to more than six weeks of temporary total disability within the Board guidelines. The Tribunal directed the WCB to determine the extent of benefits.

389* 22/05/87
(Trepanier et al. v. Latimer et al.)
A worker died of his injuries two and a half years after the van in which he was riding from lunch at a hotel back to a job site was hit by a train. The van was driven by a second worker, who was killed in the accident. It was owned by a third worker for the same employer. The wife of the first worker brought lawsuits against the litigation administrator (Administrator ad litem) of the estate of the second worker who was driving the van, the third worker who owned it, and others. The first two parties applied under s. 15 for a determination of whether the rights of action of the first worker's wife were taken away under s. 8(9). In Interim Decision No. 389 the Tribunal found that

her right of action against the second worker who was driving the van was taken away by the section. In this decision, the Tribunal found that the wife's right of action against the third worker, who owned the van, was taken away by s. 8(9). It was agreed by the parties and accepted by the Panel that both workers in the van were in the course of their employment at the time of accident and that the van was owned by the third worker. Regarding whether the worker who owned the van was in the course of his employment, the Tribunal referred to the two possible interpretations of s. 8(9) considered by the Ontario Divisional Court in Elaine Meyer, et al. and the Workers' Compensation Board et al.: (1) The negligent worker must be actually engaged in employment at the time of the happening of the accident; (2) It must be determined that the negligent worker was in the course of employment at the time of the act of negligence. But the Tribunal found it unnecessary to choose between these alternative interpretations since it found that the third worker, who owned the van, had been in the course of his employment both at the time the van was taken - the alleged negligent act - and at the time of the accident. There was no indication that he had removed himself from the course of his employment and was pursuing strictly personal activities at any point. The Tribunal found that all three workers had left for the job site from the home of the first worker (which was also the company office) in the company pick-up and worked until lunch time. At that point, the third worker drove the others back to the home/office, proceeded to pick up a load of steel needed at the job site, met the other two at the hotel for 1/2 hour, then went on to the job site. Meanwhile, the other two workers drove to the hotel for lunch in the van which was parked at the house that morning. The Tribunal rejected an argument that the worker's only nexus to the accident was his ownership of the van, and that s. 166(1) of the Highway Traffic Act directs that ownership of a motor vehicle makes the owner potentially liable and does not qualify such liability by excluding owners of vehicles used in the course of employment. The protection against law suits is not one without limits in that it would not apply in a situation where the employment relationship was totally incidental to a tort. But the Tribunal found that was not the situation in this case where all three men were co-workers, all three were engaged in employment activities on the day in question, a vehicle owned by one of them rather than a stranger to the Act was used (with or without his consent) to further the employment purpose of getting the others to work, and there was a total lack of evidence that the worker who owned the van allowed it to be used for strictly personal reasons. Therefore, as the employment link was not severed, the worker who owned the van was protected by s. 8(9).

422/871* 28/07/87
(CVL Inc. et al v. Jennings et al)
The defendants in a civil action applied to determine whether the plaintiff's right of action was taken away. The plaintiff was an automobile salesman who, at the time of a motor vehicle accident, was driving a car belonging to the dealership from a pick-up point to the dealership premises. The defendant worker was driving a vehicle leased to his employer by the defendant leasing company. The issues in this decision were whether the salesman was a worker or independent operator, and if he was a worker, whether he was in the course of employment. The Tribunal applied the organization test and the factors for consideration set out in Decision No. 86. The salesman had a certain amount of discretion in performing his duties but within dealership guidelines. His remuneration was 25% of net profit on sale of vehicles but business records showed deductions from remuneration for taxes and benefits. The Tribunal concluded that the salesman was a worker within the Act. Further, the salesman was in the course of his employment since picking a car up for delivery to the dealer's lot was reasonable incidental to his general employment duties. The salesman's right of action, as well as the derivative action of the other plaintiff under the Family Law Reform Act, were taken away as against the defendant driver. The Tribunal raised the possible application of s.8(10) and (11) regarding the defendant leasing company and would issue a further decision on that issue after allowing the parties an opportunity to file written submissions.

436* 29/04/87
(Rocha et al. v. Yanez et al.)
The plaintiffs (the estate and dependents of the deceased worker) applied to determine whether their right of action was taken away. The worker was injured and later died as a result of a motor vehicle accident while returning to Toronto from Montreal, in a company truck driven by one of the defendants, after completing a work assignment in Montreal. The defendants were the employer company, executive officers of the company and the driver. The Tribunal was of the view that the Supreme Court of Canada decision in Workmen's Compensation Board v. C.P.R. and Noell encouraged an analysis of each set of facts for the purpose of determining whether the worker was only enjoying a privilege which arose out of the contract or was performing an activity which was an incident of the contract. The Tribunal decided that the totality of the event should be considered to determine whether the activities of the worker were reasonably incidental to the employment or whether they represented a distinct departure from the scope of employment. As to the scope of employment, the Tribunal must balance all the factors to determine whether the worker was in the course of the employer's employment of workers. On the evidence, the deceased was in the course of his employment. The driver, a regular worker of the employer, was also in the course of his employment, even though he was not classified as a "driver" under a collective agreement. Even if there was violation of the collective agreement, it was not sufficient to remove the driver from the scope of his employment. The right of action against the executive officers was not taken actively to the time of the accident. However, under s. 8(11) the executive officers would be liable only for their own negligence. One of the plaintiffs was a son-in-law of the deceased and did not come within the definition of "dependents" in the Act. His right of action against the employer and the driver was not taken away. The right of action of the other plaintiffs against those defendants was taken away. Section 15 of the Charter of Rights did not apply retroactively to the facts of this case.

443/87 22/05/87
(Pisana et al. v. Adragna et al.)
Section 15 application - Employment (in the course of) - Personal acts - Motor vehicle cases - Action (derivative).

479/87I* 13/05/87
(Ropp v. Walkey)
The defendants in a civil case applied to determine whether the plaintiffs' right of action was taken away. The plaintiffs were the next of kin of the deceased worker, who died as a result of a motor vehicle accident. The issue

in this interim decision was whether the worker was in the course of his employment at the time of the accident. The worker was supervising a construction project in Chatham. Normally, he would have returned to Burlington on Friday, but on this occasion, he returned on Thursday in order to attend a retirement party for the president of the employer company. The Tribunal concluded that the worker was in the course of his employment. Although attendance at the retirement party was voluntary and the president was a personal friend of the worker, the worker's early return was not a distinct departure from normal employment for purely personal reasons. He would have had to return to Burlington in any event and would have been exposed to the risk of highway driving whenever he returned. The plaintiffs' right of action being derivative under the Family Law Reform Act was taken away as against the defendant driver and his employer.

479/87* 30/07/87
(Ropp v. Walkey)
The defendants in a civil case applied to determine whether the plaintiff's right of action was taken away. It was agreed that the defendant driver was in the course of his employment with the defendant Schedule 1 employer at the time of a motor vehicle accident. The issues were: 1) whether the defendant owner of the truck was a Schedule 1 employer; 2) what was the effect of s.8(10) on the owner; 3) what was the effect of s.8(10) on the truck's manufacturer; 4) whether a defendant was an executive officer and 5) contemporaneity considering allegations of negligence in manufacture and maintenance of the truck. The Tribunal found:
1) The truck owner was a Schedule 1 employer who leased tractors and trailers, had repair facilities and was thus part of the trucking industry within Schedule 1 even though it did not report to the Board.
2) Section 8(10) applied to the owner of the truck so that the owner was not protected by s.8(9). It was argued that the Tribunal should pierce the corporate veil between the company owning the truck and the company employing the driver, but the Tribunal found that these firms were separate entities incorporated by one person for legitimate business reasons.
3) Section 8(10) applied to the manufacturer of the truck.
4) The individual defendant was an executive officer and thus not protected by s.8(9) of the pre-1985 Act. On the evidence, his involvement with the companies was in an executive capacity as the organization's directing mind. 5) In the circumstances, it was not necessary to consider contemporaneity. The plaintiff's right of action was not taken away as against the executive officer, owner and manufacturer. Section 8(11) applied to prevent recovery from these defendants of any loss caused by the negligence of the driver or employer.

517/871* 26/05/87
(Bartoshuk et al. v. Perkins)
The defendents in a civil case applied to determine whether the plaintiff's right of action was taken away. The issues were whether the defendent driver was a worker or independent operator and whether he was in the course of hise employment at the time of a motor vehicle accident. The driver purchased his own tractor then transferred ownership to the defendent company and became one of their drivers. Transfer was a requirement arising from insurance and licensing requirements. However, the driver continued to make payments on the financing of the vehicle and, terminatin of relationship with the copmpany, ownership would revert to the driver. The driver also signed an agreement stipulating that he was an independent contractor. On the basis of the organization test, the Tribunal found that the driver was a worker. Owner-operators were an integral part of the company's operation, allowing the company to share the financial burden with drivers. Even considering the control test, the driver would be a worker. The Tribunal reserved its decision as to whether the driver was in the course of employment pending production of certain relevant documents.

asleep at the wheel when the accident occurred. The Tribunal found that there was not sufficient evidence to find that he had fallen asleep, and even if he had, that would not necessarily be a distinct departure from employment that would take him out of the employment relationship. The Tribunal also determined that s. 15 of the Charter of Rights did not have retrospective application to an accident which occurred before the section came into force. The plaintiff's right of action was taken away.

725* 07/04/87
(Robinson et al. v. Clark et al.)
The defendants in a civil case applied to determine whether the plaintiff's right of action was taken away. The defendant worker was involved in a motor vehicle accident while driving a vehicle provided to him by his employer defendant. The vehicle was leased from the defendant leasing company. The worker had use of the vehicle but was to use it only for company business. The accident occurred in the evening when he was on his way to an auto dealership to service the vehicle. The worker was in the course of employment since he was taking the truck for repairs for the sole benefit of his employer. Therefore the right of action against the worker and his employer was taken away. The right of action against the leasing company was not taken away since it came within the exception in s. 8(10). The leasing company was acting as an equipment supplier and not an employer. Pursuant to s. 8(11) the leasing company would not be liable for damages, contribution or indemnity regarding any fault or negligence of the other defendants.

729/87* 14/10/87
(University of W. Ontario et al v. Killeen et al)
The defendants in a civil case applied to determine whether the plaintiff's right of action was taken away. The issue was whether the plaintiff was a worker for the defendant university at the time of alleged exposure to radiation. The plaintiff was a student researcher doing research during the summer under a $2,000 fellowship awarded to her by the Kidney Foundation. The research was to be done using the university facilities and the funds were to be disbursed through the university's business office. A letter from the university administration indicated that the plaintiff was not considered to be an employee. She had considerable freedom in doing her research. The Tribunal found that the circumstances pointed to a non-employment relationship. In a previous summer, the plaintiff was a researcher hired at an hourly wage by the university after the university obtained block funding from the government. This was contrasted with the situation in issue. The Tribunal found that the plaintiff was not a worker at the university. Her right of action was not taken away.

517/87* 16/09/87
(Bartoschuk et al v. Perkins)
The defendants in a civil case applied to determine whether the plaintiff's right of action was taken away. The defendant worker, an employee of the defendant employer, was involved in an accident while driving his tractor from his home to the employer's terminal. The defendants claimed that the worker was on his way to the terminal to pick up a load. The plaintiff testified that the worker had told her that he was driving to the terminal to park his vehicle there and pick up a car. The employer's evidence was found by the Tribunal to be seriously flawed by the employer's failure to produce documents which it claimed would show that the worker was in fact in the course of employment. The Tribunal concluded that the worker was driving to the terminal to leave the tractor there. But the defendants did not establish whether this was in the course of employment. Where a party seeks to rely on the Workers' Compensation Act to take away a right of action, that party is obliged to satisfy the Tribunal, on a balance of probabilities, that the workers were in the course of their employment. As the defendants had failed to satisfy the Tribunal that the worker was in the course of his employment, the plaintiff's right of action was not taken away.

553* 09/06/87
(Kryskow v. Sen et al.)
The plaintiffs in a civil case applied to determine whether their right of action was taken away. They were injured when struck by a motor vehicle in the employer's parking lot immediately after work. The Tribunal concluded that an employee is in the course of employment while on the employer's premises, entering upon or departing from work. The Tribunal attached no significance to the fact that it was necessary to walk a short distance on the public sidewalk in order to reach the parking lot. The workers were in the course of their employment. Their right of action was taken away.

560* 22/04/87
(van der Zalm et al. v. Dobson et al.)
The plaintiffs in a civil case applied to determine whether their right of action was taken away. The action was brought by the executrix of the deceased executive officer of a company against the defendants regarding a motor vehicle accident which occurred in 1980. The plaintiffs submitted that the deceased's election under s. 11 was invalid because material distributed by the WCB did not make it clear that by electing personal coverage, the deceased's dependents would be deprived of their right of action. The Tribunal found that rules of private contracts did not apply to statutory provisions. There was no authority for the proposition that the WCB was obliged to provide information as to the potential effect of the legislation. In any event, the material provided by the WCB was sufficient to put a lay person on notice that certain rights would be affected. The election was valid and therefore, the deceased was an employee. The plaintiffs further submitted that the defendant driver had taken himself out of an employment situation because he had probably fallen

741* 05/03/87
(Hellam et al v. Rosser et al.)
The defendants in a civil action applied to determine whether the plaintiffs right of action was taken away. The action was by the driver of and a passenger in a school bus for damages resulting from a motor vehicle accident. The plaintiffs were employees of a bus company. The issue was whether the bus company was a schedule 1 employer. The Tribunal found that the company was a schedule 1 employer in class 20.2 (iii) as the words "conveying passengers by automobile or trolley coach" included conveying by bus. The plaintiffs' right of action was taken away. Claims under the Family Law Reform Act were derivative and therefore, the right of action was taken away on those claims as well.

817/87* 28/08/87
(Bellerive et al v. Sayers)
The defendants in a civil case applied to determine whether the plaintiff's right of action was taken away. The worker was travelling during his unpaid lunch break as a passenger in his employer's truck driven by another worker, when they were involved in a motor vehicle accident. It was somewhat unclear why the worker was in the truck, but it appeared that, primarily, he was accompanying co-workers and perhaps also intended to buy a soft drink and/or cash his pay cheque. The worker normally did not go out for lunch or cash his pay cheque during lunch. In determining whether the worker was in the course of employment, the Tribunal considered the totality of the event. The fact that the worker was on his unpaid lunch break was not determinative. Neither was the fact that he may have been going to cash his cheque. The reasonable activity and distinct departure tests were not helpful in the circumstances. Even if the worker was going to cash his pay cheque, the circumstances did not, in some other respect, have a significant employment connection. The worker's activity exposed him to a type of risk quite different from and additional to that which he would be normally exposed in the course of his employment. The worker was not in the course of employment. Therefore, his right of action was not taken away.

820* 19/10/87
(Velocci et al v. WTB INC et al)
The plaintiff in a civil case applied to determine whether his right of action was taken away. The plaintiff was in a collision with a truck driver by the defendant driver and owned by the defendant employer. The issue was whether the driver was a worker of a Schedule 1 employer. It was an American company hauling goods from Ontario to the United States. The driver was also American, but residing temporarily in Ontario. He was the only one of 50 drivers residing in Ontario. The Tribunal found that the defendant employer was operating in a compulsorily covered industry in Ontario at the time of the accident and therefore was a Schedule 1 employer. The fact that it had not

registered with the WCB was irrelevant. Further, the WCB had the constitutional jurisdiction to register the employer since there was sufficient connection to Ontario on the basis of the work done in the province. The plaintiff's right of action against the driver and employer was taken away.

912* 07/10/87
(Ontario Motor Sales Ltd. et al v. Lachance et al)
The defendants in a civil case applied to determine whether the plaintiff's right of action was taken away. The claim arose out of an accident in which the plaintiff, while driving a truck owned by his employer, collided with a car driven by defendant driver. At the time of the accident, the defendant driver was delivering the vehicle he was driving from the defendant company in Oshawa to a leasing corporation in Toronto. The issue before the Tribunal was whether the drivers were in the course of their employment at the time of the accident. The Tribunal found that the defendant driver was employed on a casual basis to deliver cars for the defendant company. His right to decline work was found to be evidence only of the fact that he was a casual worker and not significant to the question of whether he was an independent contractor. The Tribunal noted that the delivery service to customers was an integral part of the defendant company's business. Taking this into account, together with common law tests of employment, the Tribunal concluded that the defendant driver was in fact an employee in the course of his employment at the time the accident occurred. Similarly, the plaintiff, who was a stone mason travelling from his home in Oshawa to a job site in Toronto, was found to be in the course of employment at the time of the accident. The plaintiff's right to sue the defendants was taken away by the Act, as was the right of the plaintiff's dependents. The Tribunal further stated that as no argument had been made with respect to injury or disablement, the application should be treated in substance as an application as to which forum the matter should be pursued. Accordingly, there was no adjudication of the right to compensation.

958/87 05/11/87
(Klich et al v. Di Maria et al)
Section 15 application - Employment (in the course of) - Travelling (injury in the course of) - Motor vehicle cases.

961/87 13/11/87
(Rogers et al v. Ontario Hydro et al)
See under s.8(11)

Section 16

53/87* 15/05/87
(Welland County General Hospital v. Ontario Nurses Association)
See under s.15

Section 20(1)

557* 25/02/87
See under s.1(1)(a)

636/87 13/11/87
See under s.20(5)

Section 20(5)

636/87 13/11/87
Disablement - Aggravation - Pre-existing condition (back condition) - Delay - Notice (of accident) - Back conditions (lower back)

Section 20(6)

557* 25/02/87
See under s.1(1)(a)

Section 21

19/87* 08/04/87
The employer applied for an order requiring the worker to attend a medical examination. The employer intended to appeal a decision of the Claims Review Branch granting only 50% relief under SIEF. SIEF was a valid compensation goal. Information regarding the worker's present condition was not a valid compensation goal since that was not an issue before the WCB. The examination was important because medical information on file did not explain the extent of the worker's pre-existing condition or his susceptibility to disability. The Tribunal should decide whether the medical information on file is sufficient for the employer's doctor to provide an opinion on the basis of documents only. In this case the evidence was not of such quality so as to enable the doctor to provide meaningful evidence on the basis of the medical evidence on file only. The employer's application was granted. A dissenting Panel member questioned whether the SIEF was a valid compensation goal, considering that the broad intent of the Act was to compensate injured workers, and not to determine assignment of assessments. Further, the dissenting member was of the opinion that an examination should not be ordered unless the doctor has indicated that he is unable to provide a meaningful opinion without the opportunity to examine the worker.

149/87 23/06/87
Medical examination - Access to WCB file (medical information) - Privacy.

464/87 09/06/87
Medical examination - Access to WCB file (medical information).

465/87* 09/06/87
The employer applied for a medical examination of the worker. The worker did not attend the hearing and the Tribunal proceeded in his absence. The employer had requested the examination in January 1987. Since then, the worker's doctor has indicated that the worker was fit to return to work. The employer submitted that it wanted the examination to determine the nature of the ongoing disability in order to ensure that the worker was receiving the best care possible and would be able to recover and return to work. The Tribunal found this to be a valid compensation goal. However, since the worker was declared fit by his doctor, the examination no longer had any real practical purpose. Although the worker could apply for more benefits in the future, the mere possibility was insufficient to authorize a further examination. The application was denied without prejudice to a further application should the worker appeal for more benefits.

704/87* 19/10/87
See under s.77

8091* 23/07/87
The worker applied under s.21 to determine the employer's right to a medical examination. The employer required the examination before it would allow the worker back to work. The Tribunal considered the preliminary issue of whether it had jurisdiction in this matter. The employer claimed that it wanted the examination as a matter of health and safety, not workers' compensation, and that therefore, this examination was not a medical examination within s.21 of the Act. The Tribunal found that it had jurisdiction. The worker had claimed compensation within the provision of s.21(1). Therefore, the Tribunal's jurisdiction was triggered. The employer's purpose in requiring the examination would be relevant to the merits of the application. The hearing would be reconvened to determine the matter on the merits.

831/87I 05/08/87
Medical examination - Agreement (parties).

851/87* 25/09/87
The employer applied for an order requiring the worker to attend for a medical examination by one of the doctors providing occupational health services to the employer. The employer presented evidence that two appointments had been made for the worker which the worker failed to keep. The employer stated that the worker had been notified of the first appointment in a telephone conversation and of the second by registered mail. The worker testified that he had not received notice of either appointment and that he did not, in fact, object to a medical examination by a doctor chosen by the employer where it could be scheduled at a convenient time. The Tribunal dismissed the employer's application on the basis that the evidence did not establish that the worker did in fact object to attending a medical examination arranged by the employer.

1090/87I 26/10/87
Adjournment.

Section 22 (repealed)

150/87L 28/05/87
Leave to appeal (good reason to doubt correctness) - Leave to appeal (substantial new evidence) - Medical referee - Medical report.

Section 23

238/87 27/04/87
Consequences of injury - Pre-existing condition (deep venous thrombosis) - Aggravation - Medical treatment - Investigation by Tribunal - Leg condition (venous stasis ulcer).

Section 26

505/87* 23/06/87
The worker appealed a decision of the Hearings Officer denying a partial commutation of the worker's pension to pay off $5,100 in debts. The worker's current monthly income, excluding pension, left her with a slight surplus. She had been debt-free prior to her accident. The Tribunal considered the Board's criteria for commutation as guidelines only. In this case, the commutation would have a continuing rehabilitative impact by removing one of the negative effects of the worker's injury. Further, the partial commutation would reduce the periodic payments to the worker by a nominal amount only. The appeal was allowed.

706* 05/08/87
The worker appealed a decision of Appeals Adjudicator denying a partial commutation of the worker's pension and denying entitlement for disablement of the worker's feet, hands, neck and shoulders. The worker suffered a compensable fracture of his right leg in 1969 when he was 30 years old. He has since gone into his own business and sought the commutation to pay off the mortgage on his house and liquidate debts and tax arrears. The commutation would result in a $385 monthly gain. The worker would use this money to expand the business and hire help which he needed because of his deteriorating condition. The Tribunal decided that s.26 may be properly taken as authorizing the consideration of the general financial interest and wishes of the worker and not just his need in the sense of requiring that there be some showing of imminent hardship or peril if the money is not forthcoming in a lump sum. In this case the worker's financial position was tight but not precarious. The commutation was in his long-term interest and should not be denied simply because he managed his resources in such a way that he was not in serious trouble financially. The appeal was allowed with regards to the commutation. As to entitlement for arthritis to parts of the body other than those initially injured, there had not been a final decision as to causation by the Board. This aspect of the appeal was referred back to the Board for assessment and decision.

Section 26(1)

406/87* 14/05/87
The employer appealed the decision of the Hearings Officer granting a commutation of the worker's pension. The worker requested the commutation to retire certain debts including a lump sum payment to his wife to conclude their separation. The commutation would also allow him to obtain sole ownership of the matrimonial home and provide capital for a part-time business. Considering the Board guidelines, the Tribunal concluded that the overall guiding principle should be the long term best interest of the worker. In this case the expenses of the separation could be permanently solved by the commutation. His long term income would not be jeopardized since his job as a teacher and his part-time business were not affected by his disability. Further, there was an important aspect of social rehabilitation since the retention of the matrimonial home would have a significant psychological benefit by introducing an element of stability for the worker and his children. Commutation of the pension was affirmed. The employer's appeal was denied.

853/87 13/10/87
Commutation - Rehabilitation (of worker) [vocational] - Board Directives and Guidelines (standard of review).

Section 36

349/87L* 04/09/87
See under s.86o(3)

Section 36(1)

572* 29/05/87
The worker's widow appealed a decision of the Appeal Board pursuant to leave previously granted. Since there were extensive submissions on the leave application and since the employer would not be participating in the appeal, the Tribunal determined this appeal on the basis of the material in the file without a further hearing. The issue was whether the worker's death from a stroke in June 1981 was attributable to an accident at work in January 1980 when the worker, a nursing assistant in a psychiatric hospital, was assaulted by a patient. The physical injuries resulting from the assault resolved, however the worker suffered emotional problems. He had a history of hypertension and a minor stroke in 1967. The Tribunal found that the accident was a significant contributing factor in the development of the worker's

elevated hypertension. In determining whether the worker's death was a compensable consequence of the accident, the Tribunal had to determine whether death resulted from the injury. It was not necessary to establish that death was a natural or probable consequence of the injury. In this case the accident contributed to elevation of the pre-existing hypertension. The contribution of the accident was critical in the worker's death and there were no intervening causes to break the chain of causation. The widow was entitled to benefits. The appeal was allowed.

Section 36(14)

137/87* 22/07/87
See under s. 1(1)(f)

Section 39

547* 16/10/87
See under s.11

Section 40

616/87 21/07/87
Temporary partial disability - Temporary partial benefits - Pre-existing condition (degenerative disc disease) - Back conditions (lower back).

Section 40(1)

4/87 13/10/87
See under s.40(2)(b)

59* 12/06/87
See under s.40(2)(b).

60/87L* 20/05/87
See under s.40(2)(b).

127/87L 07/04/87
See under s.40(2).

209L 24/07/87
See under s.86o.

232/87* 19/06/87
See under s.43(1).

245/87 02/04/87
Temporary total disability - Temporary partial disability - Availability for employment - Suitable employment - Alcohol - Medical report - Credibility - Back conditions.

274/87L 03/06/87
See under s.40(2)(b).

341/87 07/04/87
Chance event - Arising out of in the course of employment - Presumptions - Significant contribution - Delay - Continuity (of complaint) - Repetitive movement - Medical report - Elbow (tennis elbow).

350 25/05/87
See under s.40(2)(b).

367/87 11/09/87
See under s.40(2)

452/87 01/10/87
Organic evidence of injury, none - Location (of injury) [subsequent incident outside work] - Neck condition (strain) - Shoulder condition (strain).

458/87 26/05/87
Temporary total disability - Credibility - Medical report - Continuity (of treatment) - Location (of injury) [subsequent incident outside work] -Back conditions (lower back).

511/87 15/06/87
See under s.3(1).

527/87 16/09/87
See under s.40(2)(b)

529/87* 04/09/87
See under s.40(2)(b)

543/87 10/09/87
See under s.40(2)(b)

547* 16/10/87
See under s.11

550/87 16/06/87
See under s.40(2)(b).

639 27/05/87
Temporary total disability - Temporary partial disability - Disability (permanent) - Availability for employment - Suitable employment - Foot condition - Jurisdiction (powers of Tribunal) [referrals to WCB with directions].

647 21/07/87
Disability (temporary) - Organic evidence of injury none - Psychological condition - Psychogenic pain - Pain magnification - Termination of benefits - Shoulder condition (strain).

657/87 13/10/87
Temporary total disability - Continuity (of complaint) - Medical report.

774/87* 10/08/87
The worker appealed a decision of the Appeals Adjudicator denying entitlement to benefits from November 1983 to January 1984 for a back condition that the worker claimed was related to a compensable accident in 1974. In 1974 the worker suffered a disc injury for which he received a 20% pension. The Tribunal found that the 1983 condition was medically compatible with the 1974 accident. There was continuity of symptoms between 1977 and 1983 although there was no active treatment. The Tribunal concluded that the disability in 1983 resulted from exacerbation of his back condition triggered by extra overtime work performed by the worker in November 1983. The appeal was allowed.

905 04/05/87
Temporary total disability - Disability (permanent) - Aggravation - Medical report - Shoulder condition.

910I 10/06/87
See under s.86g(2).

976/87 02/11/87
Temporary total disability - Psychological condition - Back conditions (lower back).

1000/87 22/10/87
Disability (permanent) - Drugs - Neck condition (strain) - Back conditions (lower back).

Section 40(2)

89/87 31/07/87
Temporary partial disability - Temporary total benefits - Continuity (of treatment) - Continuity (of complaint) - Availability for employment - Suitable employment - Rehabilitation (of worker) - Back conditions (lower back).

127/87L 07/04/87
Leave to appeal (good reason to doubt correctness) - Medical report - Termination of benefits - Psychiatric condition.

367/87 11/09/87
Temporary partial disability - Medical report - Fibrositis - Sewing machine operator.

376/87I 30/06/87
Significant contribution - Psychogenic pain - Psychological condition - Credibility - Temporary partial disability - Back conditions (lower back).

415/87 05/05/87
Temporary partial disability - Board doctors - Medical restrictions - Rehabilitation (of worker) [vocational] - Availability for employment - Available employment - Jurisdiction (powers of Tribunal) [referrals to WCB with directions] - Back conditions (lower back) - Forestry.

511/87 15/06/87
See under s.3(1).

547* 16/10/87
See under s.11

598/87* 19/11/87
See under s.91(7)

647 21/07/87
See under s.40(1).

650/87* 28/09/87
See under s.86g(2)

832/87 27/10/87
Significant contribution - Multiple causes - Imprisonment - Back conditions (lower back).

910I 10/06/87
See under s.86g(2).

996/87 16/10/87
Disability (temporary) - Medical report - Psychological condition - Back conditions (lower back).

Section 40(2)(a)

75/87 27/10/87
Aggravation - Continuity (of complaint) - Wrist (synovitis).

Section 40(2)(b)

4/87 13/10/87
Temporary partial benefits - Rehabilitation (of worker) - Availability for employment - Credibility - Back conditions (lower back).

23/87* 15/05/87
The worker appealed a decision of the Appeals Adjudicator denying entitlement subsequent to May 1983 for back, shoulder, neck and arm disabilities arising out of an accident in August 1982 when the worker fell off a ladder. In a preliminary matter, the Tribunal determined it had jurisdiction to deal with the issue of non-organic disability even though the Appeals Adjudicator did not deal with it since medical reports mentioned it and it was an issue canvassed by the Board. The Tribunal also admitted evidence that did not comply with the three week rule since it was useful and relevant to the proceeding and the employer did not establish prejudice. On the merits, the Tribunal found that the worker did suffer serious injuries in the accident. Regarding the neck, shoulder and back disabilities, the Tribunal, considering the worker's credibility, found that she deliberately exaggerated the effects of pain. However, there was a degree of real, disabling pain subsequent to May 1983 which resulted from the compensable accident. Regarding the worker's arm in which she developed sympathetic dystrophy resulting in discolouration, swelling and inability to move the arm, the Tribunal found that this was also related to the accident. The worker was temporarily partially disabled until December 1983 but was not entitled to full benefits because of her failure to accept suitable employment with her employer. After December 1983, her condition became permanent. The Tribunal referred the matter to the WCB for a pension assessment. A dissenting panel member found that the arm condition was not caused by the accident but rather by the deliberate disuse of the arm.

24/87 26/10/87
Suitable employment - Medical restrictions - Availability for employment - Temporary partial benefits - Back conditions (lower back)

37* 16/06/87
See under s.45(5).

59* 12/06/87
In Interim Decision No. 59 the Tribunal concluded that the worker was totally disabled from April to May 1984. In this decision the Tribunal determined the level of benefits to which the worker was entitled from May to October 1984. The Tribunal found that the worker was temporarily partially disabled during the period in question. The worker would be entitled to full benefits unless he failed to comply with the available for work requirement or the rehabilitation requirement in (old) s. 41(1)(b). The Tribunal agreed with Decision No. 2 that regarding availability for work there must be suitable work which in fact becomes available to the worker. In this case the only available work which was offered to the worker was not suitable. The Tribunal also agreed with Decision No. 2 on the rehabilitation requirement. It is not unreasonable to expect that in most cases a worker will be required to perform a reasonable job search as part of any rehabilitation programme, regardless of whether the Board has provided specific rehabilitation services. In this case

the worker considered himself totally disabled during part of the period in question but ought to have been aware that he was capable of looking for light work. During the rest of the period in question the worker essentially waited for modified employment with the accident employer. This was not a sufficient job search, especially considering his brief job history there. Since no submissions were made as to the appropriate level of partial benefits, the Tribunal accepted the Board's normal practice and awarded benefits at the 50% level.

60/87L* 20/05/87
The worker applied for leave to appeal a decision of the WCB Appeal Board allowing only reduced benefits for the period from September 1978 to February 1979. The worker had applied for a CPP disability pension during that time. The Appeal Board found that the worker considered himself totally disabled and was therefore unavailable for work. The Tribunal found that the WCB policy regarding CPP application changed at that time so that the WCB no longer automatically considered an application for CPP benefits as indirectly as the worker considered himself totally disabled. However, this change in policy did not appear to come to the attention of the Appeal Board. The Tribunal also noted that the Appeal Board relied on correspondence regarding job-search from both inside and outside the relevant period. There was good reason to doubt the correctness of the Appeal Board decision. Leave to appeal was granted.

76/87 07/04/87
Temporary partial disability - Availability for employment - Available employment - Suitable employment - Rehabilitation (of worker) (vocational) - Continuity of treatment - Evidence - Witness - Medical report - - Eye condition (double vision) - Head (headaches).

119 16/06/87
See under s.108(2).

120/87 07/08/87
Temporary total benefits - Rehabilitation (of worker) [vocational] - Availability for employment - Multiple causes.

137* 03/04/87
The worker appealed a decision of the Appeals Adjudicator limiting benefits to 50% from Mar. 1981 to Feb. 1983 and denying benefits from Feb. 1983 to Jan. 1984, for a muscle tear in the upper chest. On reviewing the evidence the Tribunal concluded that the worker was only partially disabled after Mar. 1981. Because the worker delayed in reporting the accident until Nov. 1981, and allowing reasonable time for the Board to investigate, the Board could not provide vocational rehabilitation until well in 1982. In determining

availability for employment, considerations include: 1) a demonstrated attempt to find employment or minimize a handicap, 2) assessment of the sincerity of attempt, 3) degree to which the worker knew, or ought to have known, what was required of him or her and 40 the likelihood of success. The worker was doing some work until Nov. 1981. Because of the lack of information as to actual earnings, payments of benefits at the 50% level was not unreasonable. From November 1982 to Feb. 1983 he did little to find employment or minimize his handicap and therefore 50% benefits were appropriate. From Feb. 1983 to Jan. 1984 the evidence did not establish that the worker had a continuing disability. Although one doctor did state that the worker continued to suffer significant pain, the worker was able to resume heavy work in Jan. 1984. Appeal denied.

162/87* 10/07/87
See under s.1(1)(a).

171/87 29/04/87
Temporary partial disability - Recurrences - Benefit of the doubt - Medical report - Repetitive movement - Elbow (tennis elbow) - Jurisdiction (powers of Tribunal) (referrals to WCB with directions).

220 27/08/87
Temporary total disability - Temporary partial disability - Temporary total benefits - Pain magnification - Availability for employment - Back conditions (lower back).

225/87 29/09/87
Temporary partial disability - Temporary total benefits - Location (of injury) [subsequent incident outside work] - Rehabilitation (of worker) [vocational] - Availability for employment - Back conditions (lower back).

274/87L 03/06/87
Leave to appeal (good reason to doubt correctness) - Temporary partial benefits - Availability for employment.

317/87L* 01/04/87
The worker applied for leave to appeal a decision of the WCB Appeal Board granting only 50% benefits after a certain date. Although there was evidence of other non-compensable injuries, there was not evidence to support a finding that there were major non-compensable conditions which, in themselves, prevented the worker from being available for employment, as provided in the Claims Adjudication Branch Procedures Manual, Document no. 33-19-09. Further, the Tribunal was not satisfied that the Appeal Board conducted the appropriate

analysis under old s. 41(1)(b). There was good reason to doubt the correctness of the Appeal Board decision. Leave to appeal was granted.

332 19/08/87
Disability (permanent) - Disability (temporary) - Available employment - Thumb.

350 25/05/87
Temporary partial disability - Temporary partial benefits - Availability for employment - Case Description - Bias - Back conditions (lower back).

360/87 08/06/87
Temporary partial disability - Temporary total benefits - Delay - Credibility - Continuity (of complaint) - Continuity (of symptoms) - Rehabilitation (of worker) [medical] - Suitable employment - Back conditions (lower back).

413/87* 22/06/87
The worker appealed a decision of the Hearings Officer denying total disability benefits from January 1985 to July 1985 for a low back disability. The worker had suffered several compensable injuries for which he was receiving a 35% pension. In denying the worker's claim, the Hearings Officer relied on the worker's family doctor and treating specialist and a pension examiner who confirmed the worker's pension level during the period in question. The Tribunal found that the worker was totally disabled during the period in question. Letters from the family doctor and treating specialist, written after the decision of the Hearings Officer, confirmed total disability. The failure of the pension examiner to state an opinion as to total disability was not significant since the examiner was concerned with impairment for rating purposes. The evidence established total disability. The appeal was allowed.

433/87 09/07/87
Temporary partial disability - Malingering - Fibrositis - Jurisdiction (powers of Tribunal) [referrals to WCB with directions] - Notice (of hearing).

461/87I 01/06/87
See under s.45(5).

466/87* 14/05/87
The worker appealed a decision of the Appeals Adjudicator denying benefits beyond October 1984 for back and elbow disabilities. The worker strained his

back in May 1984. In October 1984 he was discharged from the Rehabilitation Centre and benefits were terminated. While at the Centre for back treatment, the worker asked a gym instructor for treatment for a pre-existing non-compensable elbow condition. This treatment lead to a partial disability of the worker's elbow. On the evidence, the Tribunal found that by the time of discharge, the worker was not disabled by a back condition. A worker would be entitled to compensation for a second accident which results from treatment for a compensable accident according to Board guidelines. However, in this case there was an intervening event which broke the chain of causation. The worker initiated, requested and carried out a voluntary program for a non-compensable condition. The elbow condition did not result from the back condition. The appeal was dismissed.

471* 09/06/87
The worker appealed decisions of Hearings Officers denying temporary total benefits beyond February 1985. The worker suffered several neck, back and shoulder injuries for which he was receiving a 25% pension. After an evaluation in February 1985 the worker was taken off temporary total benefits for a recurrence and returned to his pension level. The worker appealed and in July 1985 his pension was increased to 30%. The temporary partial disability provisions were applied retroactively from February to July and the worker was awarded partial benefits for this period. The Tribunal considered the meaning of total disability and concluded that a person is properly categorized as partially disabled if he is not totally physically disabled, even if he is competitively unemployable. The worker was entitled to full benefits during this period since there was no suitable, available employment and since he was willing to co-operate with rehabilitation programmes, although none were offered. After July 1985, the worker reverted to his 30% pension level. Evidence did not establish that the disability was not permanent or that maximal medical rehabilitation had not been achieved. Matters of further vocational rehabilitation and a pension supplement were referred to the Board. The appeal was allowed in part.

478/87 09/11/87
Consequences of injury - Chronic pain syndrome - Credibility - Temporary partial disability - Temporary total benefits - Availability for employment - Psychogenic pain - Psychological condition -Back conditions (sprains and strains).

527/87 16/09/87
Temporary partial disability - Temporary total benefits - Temporary partial benefits - Pensions (disability) - Supplements (to awards) - Rehabilitation (of worker) [medical] - Rehabilitation (of worker) [vocational] - Availability for employment - Back conditions (lower back).

529/87* 04/09/87
The worker appealed a decision of the Hearings Officer allowing benefits at the 50% level only for neck and back disabilities from April 1985 until March 1986 when the worker was awarded a 40% pension. The worker was injured in July 1982. From November 1983, he received full temporary partial disability benefits. In April 1985, benefits were reduced after the worker indicated he was totally disabled. The Tribunal found that the worker was entitled to total benefits during the period in question. A mere claim of total disability is not necessarily enough to disqualify the worker from full benefits. The worker had looked for modified employment, although his efforts were not extensive and not likely to produce a job. There was no modified work available with the accident employer. He had been a heavy machine operator all his working life. Further, he was functionally illiterate. In these circumstances, rehabilitation services became very relevant. However, the Rehabilitation Branch had not contacted the worker since November 1983. The Tribunal decided that the statutory presumption of entitlement to full benefits had not been rebutted and that the worker did not fail to cooperate with rehabilitation. The appeal was allowed.

543/87 10/09/87
Temporary partial disability - Availability for employment - Rehabilitation (of worker) [vocational] - Witness - Evidence (three week rule) - Back conditions (lower back).

548/87* 21/07/87
The worker appealed a decision denying benefits from June 1984 to March 1985 relating to a compensable accident in October 1982. The worker had returned to a light work and management training programme but was laid off in June 1984 because of unsuitability, with the agreement of his rehabilitation counsellor. The worker then left on a trip to Greece, returning in October 1984. On his return he contacted the rehabilitation counsellor and made medical appointments. He attempted to return to his regular job in November 1984 but laid off again shortly afterwards. In March 1985 he was diagnosed as having a herniated disc. The Tribunal found that the worker was totally disabled and entitled to full benefits from November 1984 but only partially disabled from June 1984 to November 1984. The worker was not entitled to full benefits while he was in Greece. Although he laid off in June 1984 because of unsuitable work, he failed to cooperate with rehabilitation programmes that the counsellor would have expected the worked to participate in during the period he was away. However, on return from Greece, there was no medical or vocational rehabilitation programme articulated by the Board for the worker. In the absence of an ascertainable programme, the Tribunal concluded that a worker would qualify for full benefits as long as he conducts himself in a manner consistent with the general obligation to aid in getting back to work or lessen or remove any handicap resulting from the injuries. In this case, the worker contacted the board, saw doctors and attempted work after his return in October

1984 and was therefore entitled to full benefits from October 1984 to November 1984. The appeal was allowed.

550/87 16/06/87
Entitlement - Continuity (of treatment) - Medical report - Availability for employment - Tendonitis - Sewing machine operator.

554/87* 26/06/87
See under s.45(12).

560/87* 03/09/87
The worker appealed a decision of the Appeals Adjudicator denying entitlement beyond March 25, 1985. The worker, a 28-year-old nursing assistant, suffered a low back injury while lifting a patient in September 1984. She returned to specially designed modified employment on March 25, 1985 but laid off after 2 1/2 days because of pain. She was reassessed in May 1985 and again discharged to modified employment but did not return to work until August 1985 when she started regular employment. The Tribunal found that the modified work in March 1985 was not suitable. If the worker had informed the hospital immediately that the work was not suitable, it would have made additional modifications, but the Tribunal accepted the worker's failure to do so, that she wanted to give the job her best shot. After reassessment in May 1985, the worker was available for modified work with the employer, conducted a job search, and, in any event, was a long term service employee within Board guidelines. The worker was entitled to full benefits. The appeal was allowed.

566/87 12/06/87
Temporary total disability - Temporary partial disability - Medical report - Evidence - Adjournment.

568/87* 10/07/87
The worker appealed a decision of the Hearings Officer denying entitlement for a back disability from January 1985 to November 1985. The worker originally injured his back in an accident in 1977 for which he received a 15% pension. He reinjured his back in accidents in 1983 and 1984. The Tribunal found that from January 1985 to March 1985 the worker was temporarily partially disabled. It is incumbent upon the worker to do everything reasonably within his power to minimize the effect of his disability and to try to return to the work force as expeditiously as possible. In this case, the worker considered himself totally disabled, made himself unavailable for rehabilitation, made no effort to reduce the effect of the disability or to return to the work force. He was entitled to benefits at the rate of 50% only. From March 1985 to November 1985 any residual difficulty was attributable to the original accident for which he received the pension. Therefore, the worker was not entitled to temporary

partial benefits beyond March 1985. The Tribunal did not have jurisdiction to consider a pension supplement for this period since it was not argued in any detail before the Hearings Officer and it was not an issue upon which the Hearings Officer rendered a final decision. The appeal was allowed in part.

587 05/10/87
Fibromyalgia - Continuity (of symptoms) - Credibility - Neck condition - Back conditions (disc condition).

594/87 14/08/87
Temporary partial disability - Temporary total benefits - Availability for employment - Suitable employment - Rehabilitation (of worker) [medical] - Shoulder condition (strain).

595/87L 25/06/87
Leave to appeal (good reason to doubt correctness) - Availability for employment - Suitable employment - Credibility - Rehabilitation (of worker) - Supplements (to awards).

609/87* 23/07/87
See under s.40(3).

614/87 18/09/87
Temporary partial disability - Temporary total benefits - Medical restrictions - Suitable employment - Available employment - Back conditions (lower back) - Procedure - Witness.

622/87 03/06/87
Temporary partial disability - Temporary total benefits - Availability for employment - Rehabilitation (of worker) [vocational] - Employee (long term service) - Back conditions (lower back) - Lifting.

632 08/06/87
Temporary partial disability - Temporary total benefits - Suitable employment - Shoulder condition (strain) - Jurisdiction (powers of Tribunal) [referrals to WCB with directions].

655* 15/09/87
The worker appealed a decision of the Appeals Adjudicator denying the worker sponsorship for a university course. The issues were whether the worker was eligible for sponsorship and whether the worker was entitled to benefits during

the time he was at university. The worker was a trainman who, after suffering an injury in a derailment in 1979, was not able to resume his former employment. The Board doctor who discharged him recommended training in order to prepare him for an office-type job. In July 1981, the worker's benefits were reduced when he refused an offer made by the accident employer of a temporary position as crew clerk. In September 1981, the worker enrolled at university. The Tribunal found that the worker was not entitled to sponsorship for the university programme. The evidence did not show that the B.A. programme was either necessary or expedient to getting the worker back to work. As entitlement to WCB sponsorship only flows if the programme is deemed essential to the worker's rehabilitation, the worker's appeal on this question was denied. With respect to benefits under s. 41(1)(b) during the time he was at university, the Tribunal found that the fact that the worker disagreed with the Rehabilitation Counsellor over the direction rehabilitation should take was not evidence of failure to co-operate with a programme. The Tribunal found therefore that the worker was entitled to benefits from September 1981 to June 1982, at which date the worker clearly expressed a desire to take matters into his own hands and no longer to involve himself with the Rehabilitation Department. The appeal was allowed in part.

658/87 04/11/87
Consequences of injury - Psychological condition - Chronic pain syndrome - Temporary partial benefits.

665/87 21/10/87
Temporary partial disability - Availability for employment - Rehabilitation (of worker) [vocational] - Credibility - Wrist (scapho-lunate dissociation) -Case Description - Evidence - Adjournment - Judicial review.

672/87* 07/07/87
See under s.40(3).

673/87 22/07/87
Temporary partial disability - Temporary total benefits - Medical restrictions - Suitable employment - Back conditions (sprains and strains) - Food industry.

690 07 08 87
Recurrences - Temporary partial disability - Medical restrictions - Back conditions (lower back) - Referrals to Board.

698/87* 21/08/87
The employer appealed a decision of the Hearings Officer granting full benefits for a partial disability from November 1984 to March 1985. The worker was a dockman who was injured in August 1983 while performing his work which involved strenuous repetitive heavy lifting. The Tribunal found that the worker continued to be partially disabled during the period in question and that he was entitled to full benefits. When the worker was discharged from the Rehabilitation Centre to modified work in June 1984, there was no suitable work with the employer. The worker considered starting a business out of his hobby of dog raising and breeding, as well as looking at other options. In the fall of 1984 the employer offered the worker modified employment but the worker rejected this because it was to lead back to his regular strenuous work. Instead, the worker took a sales job with a different employer, which did not work out. In March 1985 the worker obtained a job as a dogcatcher. The Tribunal was satisfied that the worker made reasonable efforts to find a job that suited his disability. The reports of the Vocational Rehabilitation Counsellor indicated no criticism of the worker's efforts. The worker was well motivated to return to work. The employer's appeal was denied.

715* 22/05/87
The worker appealed a decision of the Appeals Adjudicator denying temporary total benefits between October and December 1984 for a low back strain suffered in July 1984. The worker was cleared for modified work. After one type of suitable work ran out, the worker tried another task but had difficulty with it. After that the worker did not attempt other work and the employer did not offer other work. The Tribunal found that the worker was partially disabled during the period in question and was under medical supervision and treatment. The worker exhibited an intention to be re-employed with the accident employer and was available for work within the limitations of his disability. The worker was entitled to full benefits. The appeal was allowed.

715/87 02/10/87
Recurrences - Temporary total disability - Temporary partial disability - Temporary total benefits - Lifting - Rehabilitation (of worker) - Availability for employment - Referrals to Board - Back conditions (lower back).

719 07/07/87
Temporary partial disability - Temporary total benefits - Availability for employment - Suitable employment - Rehabilitation (of worker) [vocational] - Jurisdiction (powers of Tribunal) [referrals to WCB with directions] - Elbow (tennis) - Cashier.

723* 03/06/87

The worker appealed a decision of the Hearings Officer denying temporary total disability benefits from November 1984 to May 1985. The worker had suffered a back injury in 1974 for which he received a pension and periodically had to lay off since then because of recurring problems. In considering the meaning of temporary disability, the Tribunal concluded that disability does not refer strictly to a medical assessment of the worker's condition. There must be a relationship between the disability and the worker's ability to return to regular or modified work. In this case, the Tribunal found that the worker was severely limited in his ability to work and that his regular work was clearly beyond his physical capabilities. The employer was a large manufacturer with numerous modified jobs, but apparently did not consider the worker fit to perform any of these jobs. The worker was unable to perform regular or modified work. He was therefore temporarily totally disabled. Although the worker suffered from other health problems, there was no evidence that these other problems contributed significantly to his ability to work during the period in question. The appeal was allowed.

735/87 19/08/87

Recurrences - Multiple causes - Location (of injury) [subsequent incident outside work] - Continuity (of symptoms) - Rehabilitation (of worker) [medical] - Back conditions (lower back) - Welding.

752* 24/11/87

The worker appealed a decision of the Hearings Officer granting only 50% benefits from August 6, 1984 to November 18, 1986. In Decision No. 75212, the Tribunal found that the worker was partially disabled and referred back to the Board the issue of psychiatric disability. The Board granted a 10% pension for psychiatric disability as well as a 10% pension for organic disability. The issue in this decision was whether the worker failed to cooperate in a rehabilitation program. A worker will not be found to be uncooperative if his "uncooperative" actions can be causally related to a compensable medical problem, be it organic or psychiatric. The opinion of the Board as to suitability of a particular rehabilitation program for a particular worker must be a fair and non-arbitrary opinion. There must be also some evidence that the vocational rehabilitation program reasonably could be expected to aid the worker in getting back to work or in lessening his handicap. This worker's case was extraordinarily complex and demanding from the point of view of rehabilitation services. While it could be argued that the worker failed to cooperate for reasons that had nothing to do with his psychiatric disability, that argument overlooked the issue of the suitability of the program offered. In this case the standard rehabilitation program offered was of no benefit, and, in fact, was counter-productive. A suitable medical rehabilitation program for this worker should have included in-depth counselling and possibly limited academic upgrading. The worker was entitled to full benefits. The appeal was allowed.

754* 05/05/87
The worker appealed a decision of the Appeals Adjudicator denying entitlement from May 1983 to August 1984 for a low back disability. The worker was a sewing machine operator who suffered a compensable back injury in October 1982. On the basis of the medical evidence and the worker's evidence of her condition, the Tribunal found that the worker was totally disabled from May 1983 to November 1983. From November 1983 to August 1984 she was partially disabled. The worker was available for work with the employer in November 1983, however the employer had filled her position in June. Even if work were available, it probably would not have been suitable because of medical restrictions. The worker conducted a job search during this period by looking in newspapers and telephoning employers about lighter work in retail stores. The worker was entitled to full benefits for the entire period. The appeal was allowed.

756L* 05/10/87
See under s.86o(2)

770 07/05/87
Temporary partial disability - Temporary total benefits - Availability for employment - Available employment - Suitable employment - Rehabilitation (of worker) [vocational] - Back conditions (sprains and strains).

777 13/05/87
Significant contribution - Temporary partial disability - Psychogenic pain - Chronic pain syndrome - Psychological condition - Credibility - Medical report - Board doctors - Back conditions (strains and sprains).

778/87* 07/08/87
The worker appealed a decision of the Hearings Officer denying entitlement beyond October 1985 for leg pain resulting from a compensable accident in March 1984. The worker, a 39-year-old cashier and server in a fast food restaurant, slipped on a wet floor. In October 1985 she was discharged from the Rehabilitation Centre to regular employment and to be assessed for a permanent disability. The assessment was never carried out. The Tribunal found that the medical evidence established that the worker did have a continuing leg pain with an underlying organic cause related to the compensable accident but for which a specific diagnosis had not been determined. The worker was partially disabled by an "enigmatic chronic pain condition." The worker was entitled to benefits at the 50% rate. The worker was not provided with a rehabilitation programme by the Board, however she did not seek any programme of her own. Although her regular work was not suitable, she did consider or attempt to find other work. The appeal was allowed in part. The Tribunal reimbursed the worker for the costs of a useful and relevant medical report indicating that the worker was suffering from some depression and psychological overlay related to the accident.

782L 26/10/87
See under s.86o(3)

801 06/07/87
Consequences of injury - Intervening causes - Continuity (of treatment) - Continuity (of complaint) - Neck condition.

802* 18/06/87
The worker appealed a decision of the Appeals Adjudicator denying entitlement beyond May 1984. In November 1982 the worker suffered a minor low back injury which resolved itself. However the worker developed a psychological disability which, according to his treating psychiatrist, consisted of chronic pain syndrome and psychoneurotic reaction. The Tribunal found that shortly before the worker's industrial accident, the worker's wife was severely injured in a motor vehicle accident and the worker had been advised that his work performance was not adequate and his termination was imminent. The psychiatrist had very little knowledge regarding these other factors. The majority of the Tribunal decided that these other factors were significant contributing factors to the psychological disability. However, the industrial accident was also a significant factor. Substantial medical evidence supported the worker's position. The worker was partially disabled. Since he relied on his psychiatrist's advice to refrain from attempting any work, he was not disentitled to full benefits. The appeal was allowed. A minority opinion was of the view that the disability was caused by the other factors and not by the accident.

863I* 01/10/87
See under s.45(5)

870/87 18/11/87
Temporary total disability - Standard of proof - Rehabilitation (of worker) [medical] - Suitable employment - Back conditions (lower back).

870/87 18/11/87
Temporary total disability - Standard of proof - Rehabilitation (of worker) [medical] - Suitable employment - Back conditions (lower back).

895/87 13/10/87
Temporary partial disability - Temporary partial benefits - Rehabilitation (of worker) - Availability for employment - Suitable employment - Credibility - Back conditions - Knee.

909L 14/10/87
See under s.86o(3)(b)

976/87 02/11/87
See under s.40(1)

Section 40(2)(b)(i)

493/87 20/08/87
Temporary partial benefits - Rehabilitation (of worker) [vocational] - Availability for employment - Credibility.

Section 40(2)(b)(ii)

230/87* 29/06/87
The worker appealed a decision of the Hearings Officer denying temporary total benefits from August 1984 to November 1984. The worker suffered a back injury in 1983 and was discharged from the Rehabilitation Centre in March 1984 to return to modified work with no repetitive bending or stooping and no low level work. When the worker refused a position as a janitor with the accident employer, his benefits were reduced. The Tribunal found that the job as a janitor was not suitable since it involved the restricted activities. Board guidelines provide for contacting the worker's attending doctor when a worker contends employment is not suitable. The Board made several unsuccessful attempts to contact the worker's doctor, then decided the job was suitable. An offer by the employer to eliminate the more strenuous aspects of the job was not communicated to the worker. In November 1984, the worker did attempt the janitor's job but suffered an acute exacerbation of his back pain. The worker was not disentitled from full benefits. The appeal was allowed.

Section 40(3)

59* 12/06/87
See under s.40(2)(b).

274/87L 03/06/87
See under s.40(2)(b).

297/87I 15/09/87
See under s.86g(2)

332 19/08/87
See under s.40(2)(b)

527/87 16/09/87
See under s.40(2)(b)

529/87* 04/09/87
See under s.40(2)(b)

548/87* 21/07/87
See under s.40(2)(b).

595 24/08/87
Temporary total benefits - Credibility - Alcohol - Availability for employment - Suitable employment - Back conditions (disc condition).

609/87* 23/07/87
The worker appealed and the employer cross-appealed from a decision of the Hearings Officer reducing benefits to the 50% level from March 1985 until April 1987 when the worker was awarded a 15% provisional pension. The worker was a sewing machine operator who injured her shoulder, neck and back while picking up a bundle of clothing in April 1984. Benefits were reduced in March 1985 when the Board determined that the worker was partially disabled but the claimed to be totally disabled. The worker began a job search in March 1987 after learning that she would be getting only the 15% pension. Considering the medical reports and the worker's evidence of her condition throughout the period, the Tribunal found that the worker's condition was essentially unchanged form March 1985 when she claimed to be totally disabled to March 1987 when she was capable of conducting a job search. Even if the Vocational Rehabilitation Division did not become involved, it would have been reasonable for the worker to undertake a job search. The Tribunal agreed with Decision No. 2 that it was impractical to set individual levels of temporary partial disability. The Tribunal was not prepared to interfere with the long-standing Board policy and interpretation of the Act of reducing benefits to 50%. Further, it would be wrong to assume that the pension assessment level based on "impairment of earning capacity" reflected the "degree of earnings impairment" for reduction of benefits under old s.41(2). The appeal and cross-appeal were denied.

672/87* 07/07/87
The worker appealed a decision of the Hearings Officer denying benefits beyond December 14, 1984 for a compensable back injury suffered in July 1984. The

worker returned to work in August 1984, was laid off in September 1984 and returned on December 10, 1984 to very light modified work before being laid off again on December 14, 1984 complaining that she was in agony from back pain. Since there was an absence of medical opinion regarding job limitations, the Tribunal had to determine suitability based on the worker's credibility. The Tribunal found against the worker on credibility. Evidence established that she worked part-time for a different employer during her lay offs, including working on December 14 and 15, 1984. Since the Tribunal found against the worker on credibility, it could not accept the contention that the modified work was too painful to perform. The worker refused suitable modified work at no wage loss. In this case, the earnings impairment under old s.41(2) was no longer attributable to the accident but rather to the worker's own conduct. The appeal was denied.

770 07/05/87
See under s.40(2)(b).

Section 41(1)

398* 15/07/87
See under s.43(3).

Section 42

209L 24/07/87
See under s.86o.

547* 16/10/87
See under s.11

Section 43

209L 24/07/87
See under s.86o.

Section 43(1)

232/87* 19/06/87
The worker appealed a decision of the Appeals Adjudicator establishing earnings of about $17,000 for a 12 month period as a basis for calculating the level of temporary total disability benefits. The worker began working for the employer on May 9, 1983 and was injured on April 19, 1984. During that period the worker was laid off part of the time and received unemployment insurance benefits. The Ministry of Labour determined that the worker had done 127 hours of work for the employer "under the table" while receiving unemployment insurance. Employment records indicated that the worker had worked three of the four weeks prior to the accident. Board guidelines provided for determination of the average earnings by using the four weeks prior to the accident as the basis, but to use the permanent disability basis of 12 months or less if the permanent basis was higher. The Tribunal found that the worker had worked under the table for the employer but could not determine that the worker had worked the full four weeks prior to the accident. Considering old s.45(6) and Board policy, the Tribunal could not use average earnings in the four weeks prior to the accident and further, could not use actual earnings at the time of the accident since the worker had been employed for close to 12 months. The proper earnings basis was about $18,200 and was based on the period from May 9, 1983 to April 19, 1984 and comprised full earnings during that period including the under-the-table payments. The appeal was allowed.

398* 15/07/87
See under s.43(3).

Section 43(2)

712/87L 04 09 87
Leave to appeal (good reason to doubt correctness) - Earnings (basis).

Section 43(3)

398* 15/07/87
The worker appealed a decision of the Appeals Adjudicator computing the worker's average earnings for calculation of benefits for compensable accidents occurring in August and November 1983. The worker held concurrent jobs with two employers. In this way, he was able to work approximately 40-hour weeks. Both accidents occurred while working for one employer. In calculating average earnings, the Appeals Adjudicator did not consider the full

four weeks prior to the accident since the worker had been laid off from the accident employer part of the time. Rather, the Adjudicator considered lesser periods of time and did not give credit for double shifts. The Tribunal found the requirements of the Act would be met by looking at the worker's actual record of employment prior to the accident. While it was reasonable for the Board to develop guidelines, those guidelines did not meet the requirement of the Act in old s.45(1) on how to best calculate average earnings. The worker had two jobs to make up a full week of employment when there was a shortage of work at one of his employers. Considering the worker's double shift, the worker had the equivalent of full-time five-day weeks in each of the four weeks prior to the accidents. According to old s.45(3), his earnings should be calculated as if he had been employed full time with the accident employer. Using this approach, the worker's average earnings were increased by more than $200.00 per week. The appeal was allowed.

Section 43(6)

398* 15/07/87
See under s.43(3).

Section 43(7)

183/87* 26/05/87
The worker appealed a decision of the Hearings Officer which based the worker's benefits on his earnings during the four weeks before he laid off from part-time employment in December 1984. The worker suffered a back injury in January 1974 and returned to work with the accident employer in September 1980. He was laid off with a recurrence in April 1981 but accepted part-time casual employment in November 1983 and continued this until he was laid off in December 1984. The Tribunal noted that the worker continued to have back problems throughout the period of part-time employment, was receiving a pension and a supplement. On the real merits and justice of the case, the Tribunal found that the worker did not establish a true working capacity during the 13 months of part-time employment and that the disability in December 1984 was a continuation of the recurrence in April 1981. The WCB was directed to base benefits on the worker's earnings prior to the recurrence. The appeal was allowed.

363 28/09/87
Recurrences - Earnings (basis) - Average earnings - Continuity (of symptoms) - Back conditions (lower back).

Section 45

23/87* 15/05/87
See under s.40(2)(b).

89 25/06/87
Disability (permanent) - Delay - Pre-existing condition (degenerative disc disease) - Continuity (of complaint) - Back conditions (lower back).

Section 45(4)

791/87* 05/11/87
The worker appealed a decision of the Hearings Officer denying commutation of the worker's 8% pension. The worker applied originally for the purpose of clearing debts. This had been done by the time of the hearing, but the worker continued for application to provide money for a down-payment on a house. The Tribunal stated than under s. 45(4), the onus was on the Board to establish that the lump sum would not be to the advantage of the worker. Rehabilitation was not one of the criteria under this section. The Tribunal was satisfied as to the merits of the worker's request and that an increase in the level of the worker's disability was not anticipated. There was no disadvantage to the worker if the commutation were granted. The appeal was allowed.

Section 45(5)

29/87 02/04/87
Temporary partial disability - Pensions (disability) - Aggravation - Delay -- Continuity (of complaint) - Continuity (of treatment) - Shoulder condition (strain) - Leg condition.

37* 16/06/87
Pursuant to Decision No. 371, the Tribunal determined whether the worker was entitled to a pension supplement from June 1984 to May 1985. The Tribunal agreed with Decision No. 2 as to the available work and rehabilitation requirements under old s. 41(1)(b) and determined that the interpretation would apply to the pension supplement provision in old s. 43(5). The Tribunal noted the discretion of the Board under s. 43(5), so that even if the worker met the requirements of the section, the Board might still refuse to grant a supplement if, for instance, maximum rehabilitation had been achieved. In this case,

there was no evidence that suitable work had been offered to the worker. However, extensive vocational rehabilitation directed towards reassessment and possible retraining had been offered to the worker, but the worker failed to co-operate with the programme. Board guidelines, which exempt long term service employees from job-search requirements, did not apply to the pension supplement provisions and, in any event, it was clear that there was no realistic possibility of the worker returning to work with the accident employer. The worker was not entitled to the supplement. The appeal was denied.

119 16/06/87
See under s.108(2).

220 27/08/87
See under s.40(2)(b)

451/87* 10/09/87
The worker appealed a decision of the Hearings Officer, denying him benefits subsequent to June 1985 for a low back injury suffered in August 1980. The worker was receiving a 15% permanent pension for organic disability and a 10% provisional pension for a psychiatric condition resulting from the accident. The worker claimed "full compensation" for the period from June 1985 to June 1986. Regarding the matter of jurisdiction, the Tribunal stated its view that the failure of the Hearings Officer to make any specific comments concerning the worker's entitlement to a temporary supplement did not preclude the Tribunal from considering the question. The Tribunal also noted that the Claims Review Branch had taken the proper approach to the worker's claim for "full compensation" by considering: (1) whether the condition was temporary and in excess of the pension; (2) whether the pension rating was appropriate and (3) whether the worker was entitled to a temporary supplement. The Tribunal found that the worker's condition was permanent. In determining whether the worker's impairment of earning capacity was significantly greater than is usual for the purpose of establishing the worker's entitlement to a temporary supplement, the Tribunal noted that the worker had tried to perform his pre-accident occupation and failed, not only because of his back pain but also his psychiatric problems. On the basis of evidence of the worker's medical condition, his prior work experience and education, efforts made by the worker at rehabilitation, and his limited adaptability to a new job, the Tribunal found that the worker had met the requirements of 45(5) and should be paid a temporary supplement for the period from June 1985 to June 1986. The appeal was allowed.

461/87I 01/06/87
Adjournment - Supplements (to awards) - Pensions (disability).

527/87 16/09/87
See under s.40(2)(b)

584/87* 04/11/87
The worker appealed a decision of the Appeals Adjudicator terminating supplementary benefits in 1983. The worker had been receiving supplementary pension benefits, but these were terminated for failure to co-operate with vocational rehabilitation programs. Under old s. 43(5), the worker must co-operate with a vocational rehabilitation program which would, in the opinion of the Board, aid in getting the worker back to work. The opinion of the Board as to suitability of a particular program for a particular worker must be a fair and non-arbitrary opinion. There must also be some evidence that the program offered could reasonably be expected to aid in getting the worker back to work. In the present case, the programs offered by the Board met those requirements. The evidence available to the Vocational Rehabilitation Division indicated the worker was poorly educated and under motivated. His employment goals were unrealistic. It was reasonable for the Board to conclude that if he could not handle non-demanding programs being offered, then it was unlikely he could handle something more advanced. The Board was justified in discontinuing supplementary benefits in 1983. Subsequent re-applications in 1985 and 1987 had not been subject to final decisions by the Board. The appeal was denied.

595/87L 25/06/87
See under s.40(2)(b).

718L* 21/07/87
See under s.86o(3).

801 06/07/87
See under s.40(2)(b).

8631* 01/10/87
The worker appealed a decision of the Appeals Adjudicator as to the amount of temporary supplement for one month and denying a supplement for two months. The issue concerned the use of present earnings in determining the supplement. The Tribunal invited submissions from the Board as to the manner in which supplements are calculated. The Tribunal determined that under (old) s. 43(5) the Board had to decide: 1) whether there was an impairment of earning capacity, 2) if so whether it was significantly greater than usual, 3) if so, whether in all the circumstances, a supplement should be paid, 4) whether the worker cooperated with rehabilitation or was available for work and 5) if the supplement was to be paid, in what amount. In determining whether impairment of earning capacity was significantly greater than usual and in determining the

amount of an award, present earnings would be a relevant consideration. However, it was an error to decide that a worker was not entitled to a supplement because his present earnings exceeded 75% of his average weekly earnings. Section 43(5) provided only that the total sum of supplement and award shall not exceed the like proportion of 75% of average earnings prior to the accident. The appeal was allowed. The hearing would be reconvened to consider whether there was impairment of earning capacity and whether it was significantly greater than usual.

881* 03/04/87
The worker appealed a decision of the Appeals Adjudicator denying entitlement to a pension supplement from April 1983 to Nov. 1984. In a preliminary matter, the Tribunal determined it had jurisdiction to deal with the entire period in question even though the Appeals Adjudicator's decision was made in January 1984 since the circumstances before and after the decision were similar and the decision would be applicable to the entire period. The worker suffered a serious leg injury in 1977 resulting in eventual amputation. The evidence established that the Vocational Rehabilitation Division made many efforts to train the worker, but he dropped out of all the programs. For two periods during the relevant time, the worker was not available for employment because he was working unpaid for one period and because he was in jail for the second period. Although the worker conducted a job search, he must have known it would be unsuccessful since he was not qualified for the positions for which he was applying. The Tribunal found that his purpose was to justify further supplementary benefits rather than to find a job. The worker did not cooperate with the Board. It was not unreasonable for the board to exercise its discretion to terminate benefits. The appeal was denied.

905 04/05/87
See under s.40(1).

Section 45(6)

232/87* 19/06/87
See under s.43(1).

Section 45(11)

572* 29/05/87
See under s.36(1).

Section 45(12)

107/87* 15/04/87
The worker appealed and the employer cross-appealed from a decision of the Hearings Officer awarding 50% benefits from November 1984 to July 1986 for a low back disability. The Tribunal found that although the worker suffered from pre-existing spondylolysis, a work accident was a significant contributing factor to the disability, and that the worker was partially disabled during the period in question. Since the worker received a 10% pension retroactive to the time of the accident, the Tribunal had to determine whether the partial disability during the period in question was temporary or permanent. Having regard to the Board guidelines on permanent disability and s. 45(12) of the Act, the Tribunal considered maximum medical rehabilitation and maximum recovery. Since the worker was undergoing active medical treatment and a final diagnosis had not yet been made, the Tribunal found that maximum medical rehabilitation had not been achieved and that the worker was temporarily disabled. On the evidence the worker did not commence a job search until August 1985. The appeal was allowed in part. The worker was not entitled to full benefits from November 1984 to August 1985 but was entitled to full benefits from August 1985 to July 1986.

554/87* 26/06/87
The worker appealed a decision of the Hearings Officer denying benefits from March 1979 to December 1980. The worker was a salesman who suffered a knee injury and vertigo as a result of a compensable motor vehicle accident in August 1978, for which he received a 12% pension. Despite the serious injuries, the worker returned to modified work two weeks after the accident. The employer terminated the worker's employment in March 1979. The Tribunal found that the worker was partially disabled during the period in question. The termination for declining performance was related to the injuries suffered in the accident since the worker could not get around as well and had memory problems. The worker's partial disability was temporary. Considering evidence that it took several years for the worker to adjust to his vertigo, the Tribunal concluded he had not reached maximal medical rehabilitation. The worker was entitled to full benefits since he was available, and actively searching for employment.

1027/87L M* 19/10/87
The worker applied for leave to appeal a decision of the WCB Appeal Board assessing the worker's pension at 40% for organic component of asbestosis and denying entitlement for a psychological component. The Tribunal determined that if leave were granted, it would also hear the merits of the case, considering the complexity of the issue, the urgent personal circumstances of the worker and the fact that the application was being argued on the basis of errors of law involving the same evidence on the application for leave as on

the merits. On the leave application, the Tribunal found that there was medical evidence of a psychological condition related to the worker's asbestosis. There was no substantial evidence to support the Appeal Board conclusion denying entitlement. Accordingly, there was good reason to doubt the correctness of the Appeal Board conclusion. Leave to appeal was granted. On the merits, the medical evidence was overwhelming in supporting a relationship between the psychological problems and the disability. Although the worker was suffering from a progressively deteriorating disease, he was entitled to a permanent pension for the psychological condition. The appeal was allowed. The Board was directed to assess a pension for the psychological condition. The Tribunal hearing on the organic issue was adjourned pending the Board's determination of the psychological pension.

Section 46

223R 09/04/87
See under s.76.

Section 52

11/87* 20/08/87
The worker appealed a decision of the Appeals Adjudicator denying him entitlement to temporary total disability benefits and health care benefits from October 1984 to April 1985 for back and neck injuries, arising out of an accident suffered in December 1983. The worker was discharged from the Rehabilitation Centre in October 1984 as fit for modified employment with restrictions on lifting, low level work and static positioning. Although the duties of the modified positions found for him fell within the medical restrictions, the worker was forced to lay off because of pain. The Tribunal found that although the work performed by the worker technically fell within the medical restrictions recommended by the Rehabilitation Centre the duties of these jobs appeared to have aggravated the compensable injuries, resulting in a recurrence of the earlier compensable disability. The Tribunal held that the worker was temporarily totally disabled from October 1984 to April 1985 and entitled to disability benefits and health care benefits for chiropractic treatment. The appeal was allowed.

445/87* 05/05/87
The worker appealed a decision of the Hearings Officer denying health care benefits to replace the worker's bridge. In a compensable accident in 1971 the worker knocked out his bridge, which was replaced and paid for by the WCB. In 1985, while eating a piece of cheese, the bridge fell out when the teeth holding the bridge broke. The worker came within board guidelines for

restoration services when there is deterioration of the abutment teeth. The abutment teeth were healthy prior to the accident in 1971. There was no evidence that the bridge broke in 1985 out of carelessness or misconduct. Although the worker had not been to the dentist since 1976, the worker claimed he did not have problems with his teeth and the evidence indicated that the worker's teeth were basically sound except for the abutment teeth which had deteriorated. The worker was entitled to compensation for extraction of the abutment teeth and replacement of the bridge and resulting lost time. The appeal was allowed.

Section 52(6)

915* 22/05/87

The Panel agrees with the Board's interpretation of S. 45 and while it identifies possible problems with the Board's Rating Schedule, it finds that on the evidence in this case the Rating Schedule meets the requirements of the Act. The Panel finds disabling Chronic Pain conditions which develop from industrial injuries to be generally compensable in principle, subject to genuineness and adequate motivation. The Panel recognizes that the Board does not presently compensate for chronic pain and that a change in that policy will involve the development of a new Board chronic pain assessment strategy and assessment expertise. The Panel proposes an interim Tribunal chronic pain assessment strategy for pension appeals received in the meantime, subject to subsequent reconsideration once the board's chronic pain assessment policies are in place. The Panel identifies the need for an early treatment and return to work strategy for incipient chronic pain cases (similar to what the Board is currently developing) which will require improved union and employer cooperation in accommodating disabled workers in the work-place. In the particular case, the Panel concludes that the worker is suffering from a back and leg disability. The disability is caused by a permanent lower back organic lesion complicated by chronic pain magnification associated with a Psychogenic Pain Disorder. Contrary to the Board's assessment which was based on the organic element only, the Panel finds that both elements of the disability result from the industrial accident and are compensable. The Panel rates the worker's pension level by estimating the best-fit of his total disability with the bench-mark disabilities in the Board's rating schedule. After considering evidence of symptom exaggeration and adjusting for minor under motivation, the Panel rates the pension level at 25%. The Board's rating was 15%. The Panel reserves on the difficult question of retroactive payments and on that issue invites further submissions. As previously arranged with the parties, the SIEF issue of possible transfer of responsibility for costs from the employer to the Accident Fund generally is to be the subject of reconvened hearings.

Section 53

467/87* 15/07/87
See under s.81(b).

704/87* 19/10/87
See under s.77

Section 54

46/87* 30/04/87
(Murphy et al. v. Conway)
See under s.15.

343/87 14/04/87
Rehabilitation (of worker) [vocational] - Discretion of board - Disability (permanent) - Suitable employment - Availability for employment.

471* 09/06/87
See under s.40(2)(b).

527/87 16/09/87
See under s.40(2)(b)

595/87L 25/06/87
See under s.40(2)(b).

655* 15/09/87
See under s.40(2)(b)

812* 02/10/87
The worker appealed a decision of the Appeals Adjudicator denying sponsorship for academic upgrading. The worker had been a chambermaid before suffering a compensable injury. She had a grade 8 education but wanted to upgrade to grade 12 so that she could try to obtain work as a dental assistant, and was currently upgrading without sponsorship. The worker did want to return to employment but was unable to find a job. On the evidence, there was no medical treatment or on-the-job training which would assist the worker in

returning to employment. The evidence did not establish whether the worker would be likely to be accepted into or succeed at a dental assistant programme. However, evidence did establish that the worker was succeeding that academic upgrading at the secondary school level. The Tribunal was of the view the upgrading to grade 10 was the minimum training essential for a secretarial or clerical job. The appeal was allowed in part. The worker was entitled to upgrading to grade 10 level. The WCB should determine whether further upgrading beyond grade 10 was necessary and, if so, sponsor the worker for any period of equivalent training she has undertaken herself.

Section 65(2)

915* 22/05/87
See under s.52(6).

Section 75

756L* 05/10/87
See under s.86o(2)

Section 75(1)

46/87* 30/04/87
(Murphy et al v. Conway)
See under s.15.

915* 22/05/87
See under s.52(6).

Section 75(2)

46/87* 30/04/87
(Murphy et al v. Conway)
See under s.15.

741* 05/03/87
(Hellam et al. v. Rosser et al.)
See under s.15.

Section 75(3)

467/87* 15/07/87
See under s.81(b).

915* 22/05/87
See under s.52(6)

Section 75(4)

467/87* 15/07/87
See under s.81(b).

Section 76

223R 09/04/87
Reconsideration - Evidence -(three week rule) - Insurance - Benefits (exceptions taken prior to worker receiving sickness benefits while claiming WCB benefits).

383R* 30/03/87
The worker requested a reconsideration of Decision No. 383 in which access to the WCB file was granted to the employer after the Panel considered written submissions. The worker submitted that the Tribunal forms at the time led to confusion with respect to her right to request an oral hearing. The employer understood that it could not use the reports in a wrongful dismissal action commenced by the worker. The Tribunal determined that the worker was objecting

only to the disclosure of several paragraphs in one medical report. The worker could have made written submissions regarding the paragraphs in question. There was no error by the original Panel in considering the documents and permitting disclosure. The paragraphs in question would not make a difference sufficient to justify exercise of the Tribunal's powers of reconsideration. The value of finality outweighed the worker's concerns.

915* 22/05/87
See under s.52(6).

Section 77

109/87 20/08/87
Access to WCB file (medical information) - Issue in dispute (s.77) [SIEF] - Confidentiality.

110/87 16/07/87
Access to WCB file (medical information) - Issue in dispute (s. 77) [SIEF].

115/87 16/07/87
Access to WCB file (medical information) - Issue in dispute (s. 77) [SIEF].

149/87 23/06/87
See under s.21.

156/87* 15/05/87
The worker objected to a decision of the Decision Review Branch to release medical information to the employer. The issue in dispute was the level of SIEF relief. The Tribunal decided that the paramount consideration in access determination is relevance and that it would be inappropriate to weight evidence or consider probative value of documents. However, there may be exceptional circumstances where disclosure of documents of only marginal relevancy could have serious adverse consequences to the worker. In those circumstances, factors set out in Practice Direction No. 1 may be considered under s. 77 of the Act. In the present case the documents were relevant to the issue in dispute. Relevant documents are released on the condition they be used for workers' compensation purposes only. Other general restrictions (such as place of access or destruction) would undermine the reasons for providing access. The Act requires confidentiality and provides that disclosure in an offence, which can be dealt with under the Provincial Offences Act. The Board

was directed to release the documents on the condition they be used for workers' compensation purposes only.

188/87 10/06/87
Access to WCB file (medical information) - Issue in dispute (s.77) [entitlement] - Procedure (section 77) - Confidentiality - Offence.

189/87 14/05/87
Access to WCB file (medical information) - Issue in dispute (s.77) [pension] - Issue in dispute (s.77) [entitlement] - Confidentiality - Offence.

190/87 18/06/87
Access to WCB file (medical information) - Issue in dispute (s.77) [SIEF].

191/87 10/06/87
Access to WCB file (medical information) [material deleted] - Issue in dispute (s.77) [SIEF] - Confidentiality - Offence.

192/87 17/06/87
Access to WCB file (medical information) - Issue in dispute (s.77) [SIEF] - Confidentiality - Offence.

193/87 17/06/87
Access to WCB file (medical information) - Issue in dispute (s.77) [entitlement] - Employer.

205/87 31/03/87
Access to WCB file (medical information) - Issue in dispute (s. 77) (continuing entitlement) - Issue in dispute (s.77) [SIEF].

206/87 31/03/87
Access to WCB file (medical information) - Issue in dispute (s. 77) (amalgamation of claims) - Issue in dispute (s.77) [SIEF].

207/87 31/03/87
Access to WCB file (medical information) - Issue in dispute (s. 77) (entitlement).

208/87 01/04/87
Access to WCB file (medical information) - Issue in dispute (s. 77) (entitlement).

209/87 01/04/87
Access to WCB file (medical information) - Issue in dispute (s. 77) (continuing entitlement) - Privacy.

210/87 01/04/87
Access to WCB file (medical information) - Issue in dispute (s. 77) (entitlement) - Privacy.

211/87 01/04/87
Access to WCB file (original application to Tribunal) - Jurisdiction (powers of Tribunal) (access to WCB file) - Issue in dispute (entitlement).

243/87 13/05/87
See under s.77(7).

287/87 01/09/87
Access to WCB file (medical information) - Issue in dispute (s.77) [entitlement].

288/87 06/05/87
Access to WCB file (medical information) - Issue in dispute (s. 77) [SIEF] - Parties (representation) [employer represented by former WCB employee] - Confidentiality - Offence.

289/87 20/05/87
Access to WCB file (medical information) - Issue in dispute (s.77) [SIEF].

290/87 28/08/87
Access to WCB file (medical information) [access denied] - Issue in dispute (s.77) [SIEF].

291/87 21/05/87
Access to WCB file (medical information) - Issue in dispute (s.77) [extent of disability] - Confidentiality - Offence.

292/87 20/05/87
Access to WCB file (medical information) - Issue in dispute (s.77) [entitlement] - Issue in dispute (s. 77) [SIEF] - Confidentiality - Offence.

293/87 23/04/87
Access to WCB file (medical information) - Issue in dispute (s. 77) [aggravation of injury] - Confidentiality - Offence.

294/87 21/04/87
Access to WCB file (medical information) - Issue in dispute (s.77)[SIEF].

296/87I 21/05/87
Case description - Access to WCB file (original application to Tribunal) - Access to WCB file (medical information) Issue in dispute (extent of disability) - Privacy.

303/87* 02/11/87
The worker appealed a decision of the Decision Review Branch to release medical reports to the employer. In a preliminary matter, the employer wished to put before the Tribunal two volumes of written submissions. The worker had no prior notice. The Tribunal stated that written submissions ideally form the backbone or oral argument, but when written submissions are to be relied on separately, it is preferable that they be put before the participants prior to the hearing so that they can be responded to at the hearing. In this case, the Tribunal admitted the submissions on condition they not be forwarded to the Tribunal until two weeks after the hearing, during which time the worker could review them and prepare a reply. On the merits, the issue in dispute was the level of SIEF relief granted for psychological problems prolonging the period of disability. The worker's permanent pension did not appear to be in dispute. The employer should be granted access to medical reports subsequent to the disability rating which address the worker's psychological state. The appeal was allowed in part.

324/87 14/04/87
Access to WCB file (medical information) - Issue in dispute (s.77) (pension).

325/87 07/04/87
Access to WCB file (medical information) - Issue in dispute (s. 77) [SIEF] - Confidentiality - Offence.

351/87* 23/09/87
The worker objected to a decision of the Decision Review Branch to release a document to the employer. In a preliminary matter the Tribunal noted that the Board withheld a whole section of the medical file even though the worker objected to the release of only one document, but since the whole section was not released by the Board, the Tribunal could not release it administratively without a decision on the merits of the appeal. The Tribunal determined that s. 77 requires relevancy to a real and actual issue in dispute and that to exercise his right of objection, the worker must be reasonably informed of the issue in dispute. According to the Tribunal section 77 contemplates multiple applications for access when different issues come into dispute. Thus, the Rules of Civil Procedure do not apply to the administrative process under s. 77 and the general common law rules of natural justice are superceded by the specifics of the legislated provisions of s.77. In this case, the worker was not reasonably informed at the time when he had to make his objection. Since that time, the employer raised new issues in dispute, which had not been considered by the Board. The matter was referred back to the Board pursuant to s.86g(2).

383R* 30/03/87
See under s.76.

390/87 28/04/87
Access to WCB file (medical information) - Issue in dispute (s.77) [SIEF].

392/87 01/09/87
Access to WCB file (medical information) - Issue in dispute (s.77) [entitlement].

399/87 30/04/87
Access to WCB file (medical information) - Issue in dispute (s. 77) [entitlement] - Issue in dispute (s. 77) [SIEF].

400/87 04/05/87
Access to WCB file (medical information) - Issue in dispute (s. 77) [entitlement].

401/87 30/04/87
Access to WCB file (medical information) - Issue in dispute (s.77) [entitlement].

402/87 10/06/87
Access to WCB file (medical information) - Issue in dispute (s.77) [SIEF].

403/87 30/04/87
Access to WCB file (medical information) - Issue in dispute (s. 77) [entitlement] - Issue in dispute (s. 77) [SIEF] - Issue in dispute (s. 77) [pension].

405/87 30/04/87
Access to WCB file (medical information) - Issue in dispute (s.77) [entitlement].

407/87* 11/06/87
The worker objected to a decision of the Decision Review Branch to release medical reports to the employer. The reports were relevant to the issue of SIEF. The Tribunal noted that the procedure at the Board did not put the worker in a position where he could exercise his rights in a reasonable way. Form letters from the Board said that the employer requested access but did not specify what issue was in dispute or why the employer was requesting access. If refinements to the process were developed to give more information to the worker, many objections could be avoided. The Board was directed to release the reports to the employer.

412/87I 28/05/87
Access to WCB file (original application to Tribunal) - Issue in dispute (entitlement) - Parties (participation) - Procedure (absent parties).

417/87I 09/07/87
Access to WCB file (medical information) [material deleted] - Issue in dispute (s. 77) [entitlement] - Standard of proof - Confidentiality.

424/87I* 26/06/87
In an appeal by the employer from a decision of the Appeals Adjudicator, the employer applied for access to the worker's file. The Tribunal found the material was relevant to the issue of entitlement. Although the employer did not participate in earlier proceedings, it was entitled to access. It would not be procedurally proper to assess the validity of the employer's appeal

prior to granting access. The employer could forward medical information to a medical consultant for review, but must delete the worker's name to protect his privacy. The documents were released to the employer for purposes of this appeal only.

426/87I 29/06/87
Access to WCB file (original application to Tribunal) - Case Description - Issue in dispute (pension).

427/87I 26/06/87
Access to WCB file (original application to Tribunal) - Issue in dispute (entitlement).

423/87I 29/06/87
Access to WCB file (original application to Tribunal) - Case Description - Issue in dispute (ongoing disability).

432/87* 17/05/87
The worker objected to a decision of the Decision Review Branch to release medical reports to the employer. In a preliminary matter, the employer requested an adjournment pending release of another Decision with similar issues. The Tribunal denied the adjournment since the other appeal was not a leading case and the Tribunal had the responsibility to deal with this case on the merits. The medical reports were relevant to the issue of SIEF entitlement. The worker feared that the employer would use the information for improper purposes within the workplace, such as denying the opportunity to compete for another job or work overtime. The Tribunal found no basis for the worker's suspicions. Violation of s.77(7) constituted an offence which could be dealt with under the Provincial Offences Act. The worker could pursue remedies under the collective agreement grievance procedure. Further, there might be a remedy under the Human Rights Code with respect to discrimination in

employment because of a handicap. The Board was directed to release the reports on condition they be used for workers' compensation purposes only.

464/87 09/06/87
See under s.21.

468/87 25/09/87
Access to WCB file (medical information) - Issue in dispute (s. 77) [entitlement].

470/87 24/06/87
Access to WCB file (medical information) [material deleted] - Issue is dispute (s.77) [SIEF] - Confidentiality.

471/87 23/09/87
Access to WCB file (medical information) - Issue in dispute (s. 77) [SIEF] - Confidentiality - Offence.

472/87 24/06/87
Access to WCB file (medical information) - Issue in dispute (s.77) [SIEF] - Employer - Confidentiality - Offence.

473/87 29/06/87
Access to WCB file (medical information) - Issue in dispute (s. 77) [entitlement] - Confidentiality - Offence.

474/87 30/06/87
Access to WCB file (medical information) - Issue in dispute (s.77) [entitlement].
- Access to file granted to employer.
- Decision limited to documents received by WCB at time of decision.

475/87 30/06/87
Access to WCB file (medical information) - Issue in dispute (s.77) [SIEF] - Confidentiality.

476/87 24/06/87
Access to WCB file (medical information) - Issue in dispute (s.77) [SIEF] - Confidentiality - Offence.

501/87 23/10/87
Procedure (absent parties) - Access to WCB file (medical information).

504/87 02/06/87
Access to WCB file (medical information) - Issue in dispute (s.77) [entitlement] - Standard of proof - Asbestos.

507/87* 23/06/87
The worker appealed a decision of the Decision Review Branch to release medical information to the employer. The information was relevant to the issue of entitlement for a wrist injury. The worker acknowledged that the primary reason for objecting to disclosure was a procedural attempt to persuade the Board to conduct further investigation. The tribunal stated that s.77 should be used only for genuine concerns about confidentiality and disclosure of information relevant to an issue in dispute. The Tribunal noted that the worker's other concern, that the statutory provisions were not sufficient to deter disclosure, was a matter to be directed to the Legislature, not the Tribunal. The Board was directed to release the reports.

528/87 15/06/87
Access to WCB file (medical information) - Issue in dispute (s.77) [SIEF] - Agreement (parties).

530/87 22/06/87
Access to WCB file (medical information) [material deleted] - Issue in dispute (s.77) [SIEF].

565/87 23/06/87
Access to WCB file (medical information) - Issue in dispute (s.77) [entitlement] - Confidentiality - Procedure (absent parties).

625/87 29/07/87
Access to WCB file (medical information) - Issue in dispute (s.77) [suitable employment].

626/87 31/07/87
Access to WCB file (medical information) - Issue in dispute (s.77) [entitlement] - Issue in dispute (s.77) [pension] - Confidentiality - Offence.

627/87 23/07/87
Access to WCB file (medical information) - Issue in dispute (s.77) [SIEF].

628/87 28/07/87
Access to WCB file (medical information) - Issue in dispute (s.77) [recurrence].

629/87 29/07/87
Access to WCB file (medical information) - Issue in dispute (s.77) [SIEF] - Confidentiality - Offence.

630/87 29/07/87
Access to WCB file (medical information) [access denied] - Issue in dispute (s.77) [SIEF] - Jurisdiction (powers of Tribunal) [no jurisdiction].

631/87 31/07/87
Access to WCB file (medical information) - Issue in dispute (s.77) [SIEF] - Issue in dispute (s.77) [amalgamation of claims] - Confidentiality.

632/87 28/07/87
Access to WCB file (medical information) - Issue in dispute (s.77) [SIEF] - Issue in dispute (s.77) [ongoing disability] - Issue in dispute (s.77) [pension].

633/87 28/07/87
Access to WCB file (medical information) - Issue in dispute (s.77) [entitlement] - Issue in dispute (s.77) [SIEF] - Confidentiality - Offence.

634/87 31/07/87
Access to WCB file (medical information) - Issue in dispute (s.77) [ongoing disability].

635/87 24/07/87
Access to WCB file (medical information) - Issue in dispute (s.77) [SIEF] - Confidentiality - Offence.

704/87* 19/10/87
The worker appealed a decision of the Decision Review Branch to release medical reports to the employer. The issues in the case were the test for access and the extent of disclosure by the employer. The employer had written to the WCB objecting to benefits being paid to the worker after the date on which the worker was advised that he was capable of suitable modified employment. The Tribunal stated that the test for disclosure of documents was relevance. If the Tribunal questioned the genuineness of the employer's request, it could conclude that the employer had not placed an issue in dispute. However, the fact that an employer had not defined the issue in dispute as precisely as possible does not necessarily mean that the employer was embarking on a fishing expedition. In this case, the employer defined the issue as entitlement to ongoing benefits. The reports were relevant to that issue. The Tribunal further determined that it should not decide whether the worker's identity had to be removed from material in the worker's file subsequently disclosed by the employer to a doctor for opinion. Violation of the prohibition against disclosure under s. 77(7) constituted an offence under the Provincial Offences Act. It would be in the domain of a Provincial Court Judge to decide whether disclosure to a doctor contravened s. 77(7). An order by the Tribunal as to subsequent disclosure would not be binding on the Court. The Tribunal could properly impose conditions that were not within the purview of the Provincial Court, such as the condition that access be permitted for workers' compensation purposes only. The Tribunal imposed a further condition that the employer notify the WCB and the worker as to the nature and extent of subsequent disclosure, so that they will be in position to know of a potential violation of the section.

719/87 25/11/87
Access to WCB file (medical information) - Issue in dispute (s. 77) [pension].

721/87 25/11/87
Access to WCB file (medical information) [material deleted] - Issue in dispute (s. 77) [SIEF].

722/87 16/11/87
Access to WCB file (medical information) [material deleted] - Issue in dispute (s. 77) [entitlement] - Confidentiality.

723/87 30/09/87
Access to WCB file (medical information) - Issue in dispute (s. 77) [pension] - Confidentiality.

725/87 25/11/87
Access to WCB file (medical information) - Issue in dispute (s. 77) [entitlement].

744/87 26/08/87
Access to WCB file (medical information) - Issue in dispute (s.77) [entitlement] - Issue in dispute (s.77) [SIEF] - Confidentiality - Offence.

745/87 08/09/87
Access to WCB file (medical information) - Issue in dispute (s.77) [SIEF] - Confidentiality - Offence.

746/87 11/09/87
Access to WCB file (medical information) - Issue in dispute (s.77) [SIEF] - Confidentiality - Offence.

747/87 08 09 87
Access to WCB file (medical information) - Issue in dispute (s.77) [SIEF].

749/87 08/09/87
Access to WCB file (medical information) - Issue in dispute (s.77) [SIEF] - Issue in dispute (s.77) [pension] - Issue in dispute (s.77) [ongoing disability] - Confidentiality - Offence.

750/87 24/09/87
Access to WCB file (medical information) - Issue in dispute (s. 77) [SIEF] - Confidentiality - Offence.

752/87 16/11/87
Access to WCB file (medical information) [material deleted] - Issue in dispute (s. 77) [extent of disability].

753/87 13/11/87
Access to WCB file (medical information) - Issue in dispute (s.77) [entitlement].

754/87 20/10/87
Access to WCB file (medical information) - Issue in dispute (s. 77) [entitlement].

755/87 21/10/87
Access to WCB file (medical information) [access denied] - Issue in dispute (s.77) [SIEF].

790* 15/05/87
The worker objected to a decision of the Decision Review Branch to release medical information to the employer. The employer wrote to the WCB requesting termination of the worker's pension for a psychological disability which had been granted by the Appeal Board. The Claims Adjudication Branch issued a decision denying further review and informing the employer of his right to appeal. Since the pension issue had been decided by the WCB Appeal Board, the employer would have to apply to the Tribunal for leave to appeal. An employer could not start the whole process again merely by writing to the Board. Therefore there was no issue in dispute within s. 77. Access to the file was denied.

790/87I* 11/08/87
The employer requested an adjournment of a scheduled hearing on the basis that a potential key witness would not be available on the scheduled date and on the basis that the employer wanted access to a previous claim file of the worker. The previous claim involved the same area of the body and contained references to psychological elements. The Tribunal found that the availability of the witness did not constitute grounds for an adjournment since the date was set on consent and there was an onus on the parties to ensure that their witnesses were available. However, the adjournment was granted to allow the employer and the Hearing Panel an opportunity to examine relevant material from the previous claim file, so that a decision could be made on the real merits and justice of the case. It would not be appropriate for the Hearing Panel to request the file after the hearing since the Panel may wish to question witnesses based on information in that file. The adjournment was granted.

820/87 15/09/87
Access to WCB file (medical information) - Issue in dispute (s.77) [accident].

822/87 27/08/87
Access to WCB file (medical information) [material deleted] - Issue in dispute (s.77) [entitlement]

825/87 25/09/87
Access to WCB file (medical information) - Issue in dispute (s. 77) [ongoing disability] - Issue in dispute (s. 77) [pension] - Issue in dispute (s. 77) [SIEF] - Offence.

826/87I 27/08/87
Access to WCB file (original application to Tribunal) - Case Description - Issue in dispute (entitlement) - Parties (participation).

831/87I 05/08/87
See under s.21

852/87 29/09/87
Access to WCB file (medical information) [material deleted] - Issue in dispute (s.77) [entitlement] - Confidentiality - Offence.

862/87 02/11/87
Access to WCB file (medical information) - Issue in dispute (s. 77) [SIEF] - Confidentiality.

886 22/07/87
Access to WCB file (medical information) - Issue in dispute (s.77) [entitlement].

887 16/07/87
Access to WCB file (medical information) - Issue in dispute (s.77) [SIEF] - Employer (definition of) - Confidentiality.

888 08/04/87
See under s.77(6).

890 08/04/87
See under s.77(6).

891 09/04/87
See under s.77(6).

892 09/04/87
See under s.77(6).

893 09/04/87
See under s.77(6).

894 09/04/87
See under s.77(6).

896 09/04/87
Access to WCB file (medical information).

922/87 02/11/87
Access to WCB file (medical information) - Issue in dispute (s. 77) [SIEF].

1037/87 26/10/87
Access to WCB file (medical information) - Issue in dispute (s. 77) [SIEF].

Section 77(1)

704/87* 19/10/87
See under s.77

Section 77(2)

351/87* 23/09/87
See under s.77

Section 77(3)

186/87* 14/05/87
The worker objected to a decision of the Decision Review Branch to release medical information to an employer who was not the worker's employer. The costs of the worker's accident were charged to a bus company, whose driver, it was determined, was responsible for the accident. Employer in s. 77(3) included the employer who is held responsible for the accident. The medical information was relevant to the issue of transfer of costs. The WCB was

authorized to release the information to the accident employer.

287/87 01/09/87
See under s.77

351/87* 23/09/87
See under s.77

704/87* 19/10/87
See under s.77

722/87 16/11/87
See under s.77

755/87 21/10/87
See under s.77

780/87 06/08/87
Access to WCB file (medical information) - Confidentiality - Issue in dispute (s.77)[entitlement] - Issue in dispute (s.77)[Pension] - Issue in dispute (s.77) [SIEF] - Confidentiality

781/87 06/08/87
Access to WCB file (medical information) - Confidentiality - Issue in dispute (s.77) [SIEF].

782/87 06/08/87
Access to WCB file (medical information) - Confidentiality - Issue in dispute (s.77) [entitlement].

783/87 06/08/87
Access to WCB file (medical information) - Confidentiality - Issue in dispute (s.77) [SIEF].

784/87 06/08/87
Access to WCB file (medical information) - Issue in dispute (s.77) [SIEF].

785/87 07/08/87
Access to WCB file (medical information) - Confidentiality - Issue in dispute (s.77) [Ongoing disability].

786/87 07/08/87
Access to WCB file (medical information) - Confidentiality - Issue in dispute (s.77) [SIEF].

787/87 07/08/87
Access to WCB file (medical information) - Issue in dispute (s.77) [entitlement].

Section 77(4)

704/87* 19/10/87
See under s.77

Section 77(5)

156/87* 15/05/87
See under s.77.

351/87* 23/09/87
See under s.77

383R* 30/03/87
See under s.76.

407/87* 11/06/87
See under s.77.

704/87* 19/10/87
See under s.77

Section 77(6)

186/87* 14/05/87
See under s.77(3).

351/87* 23/09/87
See under s.77

407/87* 11/06/87
See under s.77.

501/87 23/10/87
See under s.77

704/87* 19/10/87
See under s.77

888 08/04/87
Access to WCB file (medical information) - Issue in dispute (s.77) (entitlement).

890 08/04/87
Access to WCB file (medical information) - Issue in dispute (s.77) (SIEF).

890 08/04/87
Access to WCB file (medical information) - Issue in dispute (s.77) (SIEF).

891 09/04/87
Access to WCB file (medical information) - Issue in dispute (s.77) (SIEF) - Privacy - Offence.

892 09/04/87
Access to WCB file (medical information) - Issue in dispute (s.77) (SIEF).

893 09/04/87
Access to WCB file (medical information) - Issue in dispute (s.77) (entitlement).

894 09/04/87
Access to WCB file (medical information) - Issue in dispute (s. 77) (SIEF).

Section 77(7)

109/87 20/08/87
See under s.77

156/87* 15/05/87
See under s.77.

186/87* 14/05/87
See under s.77(3).

187/87 14/05/87
Access to WCB file (medical information) - Issue in dispute (s.77) [ongoing disability] - Confidentiality - Offence.

188/87 10/06/87
See under s.77.

189/87 14/05/87
See under s.77.

243/87 13/05/87
Access to WCB file (medical information) - Privacy - Agreement (parties).

288/87 06/05/87
See under s.77.

293/87 23/04/87
See under s.77.

391/87 21/07/87
Access to WCB file (medical information) - Confidentiality - Offence.

432/87* 17/05/87
See under s.77

470/87 24/06/87
See under s.77.

471/87 23/09/87
See under s.77

472/87 24/06/87
See under s.77.

473/87 29/06/87
See under s.77.

475/87 30/06/87
See under s.77.

476/87 24/06/87
See under s.77.

477/87 18/08/87
Access to WCB file (original application to Tribunal) - Issue in dispute (suitable employment) - Parties (participation) - Confidentiality - Offence

507/87* 23/06/87
See under s.77.

626/87 31/07/87
See under s.77

629/87 29/07/87
See under s.77

633/87 28/07/87
See under s.77

635/87 24/07/87
See under s.77.

704/87* 19/10/87
See under s.77

719/87 25/11/87
See under s.77

721/87 25/11/87
See under s.77

722/87 16/11/87
See under s.77

723/87 30/09/87
See under s.77

725/87 25/11/87
See under s.77

744/87 26/08/87
See under s.77

745/87 08/09/87
See under s.77

746/87 11/09/87
See under s.77

749/87 08/09/87
See under s.77

750/87 24/09/87
See under s.77

752/87 16/11/87
See under s.77

753/87 13/11/87
See under s.77

754/87 20/10/87
See under s.77

781/87 06/08/87
See under s.77(3)

782/87 06/08/87
See under s.77(3)

784/87 06/08/87
See under s.77(3)

786/87 07/08/87
See under s.77(3)

787/87 07/08/87
See under s.77(3)

821/87* 10/09/87
The worker appealed a decision of the Decision Review Branch granting the employer access to the worker's medical file. The Tribunal dismissed the appeal on the basis that the worker's concern that the employer might improperly use medical information contained in his file against the worker in his employment was a concern which related to labour relations, not worker's compensation. Accordingly, if the worker's employment situation were to be negatively affected by the release of the medical file, he would have to seek a remedy against the employer in another forum. As the medical file was found to be relevant to the issue of SIEF relief, access to the file was granted to the employer.

825/87 25/09/87
See under s.77

852/87 29/09/87
See under s.77

862/87 02/11/87
See under s.77

891 09/04/87
See under s.77(6).

Section 77(8)

156/87* 15/05/87
See under s.77.

288/87 06/05/87
See under s.77.

293/87 23/04/87
See under s.77.

391/87 21/07/87
See under s.77(7).

471/87 23/09/87
See under s.77

472/87 24/06/87
See under s.77.

473/87 29/06/87
See under s.77.

476/87 24/06/87
See under s.77.

477/87 18/08/87
See under s.77(7)

507/87* 23/06/87
See under s.77.

626/87 31/07/87
See under s.77

629/87 29/07/87
See under s.77

633/87 28/07/87
See under s.77

635/87 24/07/87
See under s.77.

704/87* 19/10/87
See under s.77

744/87 26/08/87
See under s.77

745/87 08/09/87
See under s.77

746/87 11/09/87
See under s.77

749/87 08/09/87
See under s.77

750/87 24/09/87
See under s.77

852/87 29/09/87
See under s.77

891 09/04/87
See under s.77(6).

Section 79(2)

718L* 21/07/87
See under s.86o(3).

Section 80

351/87* 23/09/87
See under s.77

484/87I* 23/06/87
See under s.81.

508/87* 24/07/87
See under s.1(1)(a)(iii).

510/87I* 16/06/87
See under s.86g(2).

766LA 21/07/87
Procedure - Natural justice - Reconsideration.

909L 14/10/87
See under s.86o(3)(b)

915* 22/05/87
See under s.52(6).

Section 80(1)

137/87* 22/07/87
see under s. 1(1)(f)

304* 28/04/87
(Routhier et al. v. Vatour)
See under s.15.

494R* 16/06/87
See under s.86k.

Section 81

180/87 25/09/87
Recurrences - Aggravation - Pre-existing condition (degenerative disc disease) - Continuity (of complaint) - Continuity (of symptoms) - Back conditions (lower back) - Investigation by Tribunal.

484/87I* 23/06/87
The worker appealed a decision of the Hearings Officer denying entitlement for a disability in June 1985. The worker claimed aggravation of an earlier injury. To establish continuity of complaint the worker needed access to the employer's first aid records. However, the employer would not release records which the company doctor deemed non-occupational. The Tribunal exercised its power under s.81 to require production. The hearing was adjourned pending production.

Section 81(b)

467/87* 15/07/87
The worker appealed a decision of the Appeals Adjudicator denying continuing benefits from July 1984 to September 1984 for a low back strain suffered in June 1984. The WCB confirmed the employers private investigation that the worker played in a baseball game in July 1984. The Appeals Adjudicator cut off benefits relying on the opinion of the Board doctor that the worker would have been totally recovered by the time he played baseball. The Tribunal did not attach significant weight to the opinion of the Board doctor that the worker would have been totally recovered by the time he played baseball. The Tribunal did not attach significant weight to the opinion of the Board doctor since he did not know the specifics of the worker's job which required him to carry

containers weighing up to 130 pounds. The Tribunal accepted that the worker played baseball as a test of his back and, in fact, attempted to return to work shortly after the baseball game. The worker was disabled during the period in question. The appeal was allowed. In additional reasons McCombie was of the view that use of private investigators should not be admitted into evidence unless strict, specified requirements and procedures are met.

688/87* 16/11/87
The worker appealed a decision of the Appeals Adjudicator denying benefits beyond July 24, 1983 for shoulder and neck disabilities suffered in a compensable accident on July 12, 1983. In a preliminary matter, the Tribunal determined the admissibility of videotape evidence. The videotape, taken on July 24, 1983, by an investigator hired by the employer, showed the worker in a public parking lot unloading and later reloading a car with boxes. The Tribunal stated that videotape evidence must be used with great caution. It considered: 1) whether the evidence was relevant to the issue in dispute; 2) the authenticity of the evidence and 3) whether there were special circumstances which might warrant exclusion of relevant and authentic evidence, i.e., is probative value so limited as to warrant exclusion and is there an inflammatory or prejudicial effect which would outweigh the potential evidentiary or probative value of the evidence. In this case, the videotape was relevant, authentic, of significant probative value and not so potentially prejudicial as to warrant its exclusion. The videotape (excluding the audio portion containing the investigator's narration) was admitted into evidence. As to the worker's right to privacy, the Tribunal noted that there was not, in Ontario, legislation or common law protecting an individual from having his picture taken or being the subject of electronic surveillance. It was not necessary to consider policy, or the Tribunal's powers, regarding intrusive or offensive investigatory tactics, as the worker was observed performing commonplace physical activity in a public place. On the merits, the videotape cast serious doubt upon the accuracy of medical reports and the worker's credibility. The weight of the packages shown in the videotape, and the possibility that the worker's regular job involved more strenuous work, was not conclusive. The videotape showed the worker to be active, comfortable and apparently in no pain. The worker was not disabled as of July 24, 1983. The appeal was denied.

Section 86e(2)

492/87I* 16/09/87
In an appeal by the worker from a decision of the Appeals Adjudicator, the employer objected to the composition of the Panel. The worker is a member of a union. The Panel member representative of workers was a senior official of the union to which the worker belongs. The employer submitted that there was a perception of bias. In order not to delay a decision on the merits, the Panel

containers weighing up to 130 pounds. The Tribunal accepted that the worker played baseball as a test of his back and, in fact, attempted to return to work shortly after the baseball game. The worker was disabled during the period in question. The appeal was allowed. In additional reasons McCombie was of the view that use of private investigators should not be admitted into evidence unless strict, specified requirements and procedures are met.

688/87* 16/11/87
The worker appealed a decision of the Appeals Adjudicator denying benefits beyond July 24, 1983 for shoulder and neck disabilities suffered in a compensable accident on July 12, 1983. In a preliminary matter, the Tribunal determined the admissibility of videotape evidence. The videotape, taken on July 24, 1983, by an investigator hired by the employer, showed the worker in a public parking lot unloading and later reloading a car with boxes. The Tribunal stated that videotape evidence must be used with great caution. It considered: 1) whether the evidence was relevant to the issue in dispute; 2) the authenticity of the evidence and 3) whether there were special circumstances which might warrant exclusion of relevant and authentic evidence, i.e., is probative value so limited as to warrant exclusion and is there an inflammatory or prejudicial effect which would outweigh the potential evidentiary or probative value of the evidence. In this case, the videotape was relevant, authentic, of significant probative value and not so potentially prejudicial as to warrant its exclusion. The videotape (excluding the audio portion containing the investigator's narration) was admitted into evidence. As to the worker's right to privacy, the Tribunal noted that there was not, in Ontario, legislation or common law protecting an individual from having his picture taken or being the subject of electronic surveillance. It was not necessary to consider policy, or the Tribunal's powers, regarding intrusive or offensive investigatory tactics, as the worker was observed performing commonplace physical activity in a public place. On the merits, the videotape cast serious doubt upon the accuracy of medical reports and the worker's credibility. The weight of the packages shown in the videotape, and the possibility that the worker's regular job involved more strenuous work, was not conclusive. The videotape showed the worker to be active, comfortable and apparently in no pain. The worker was not disabled as of July 24, 1983. The appeal was denied.

Section 86e(2)

492/87I* 16/09/87
In an appeal by the worker from a decision of the Appeals Adjudicator, the employer objected to the composition of the Panel. The worker is a member of a union. The Panel member representative of workers was a senior official of the union to which the worker belongs. The employer submitted that there was a perception of bias. In order not to delay a decision on the merits, the Panel

rescheduled the hearing before a differently composed Panel, while considering the objection. The Panel agreed with the test in Committee for Justice and Liberty et al. v. National Energy Board (1976), 68 D.L.R.(3d) 716 (S.C.C.) which was: do the circumstances give rise to a reasonable apprehension, which reasonably well-informed persons could properly have, of a biased appraisal and judgment of the issues to be determined. This test has to be applied to the special circumstances appropriate to different administrative Tribunals. The Appeals Tribunal members are appointed because of their expertise, achieved, in many cases, through their careers in business or union leadership. A Panel member's knowledge of a particular industry, or prior association with a union, does not, in and of itself, raise the spectre of bias. In the circumstances, the Panel member had no special knowledge of the case. He did not know the worker nor was he involved in the worker's application for benefits. The constitution of the Panel did not give rise to a reasonable apprehension of bias. The objection was denied.

Section 86g

58/87 21/07/87
Consequences of injury - Continuity (of complaint) - Medical report (payment for) - Motor vehicle cases - Jurisdiction (powers of Tribunal) [no jurisdiction].

915* 22/05/87
See under s.52(6).

Section 86g(1)

46/87* 30/04/87
(Murphy et al v. Conway)
See under s.15.

598/87* 19/11/87
See under s.91(7)

756L* 05/10/87
See under s.86o(2)

Section 86g(2)

23/87* 15/05/87
See under s.40(2)(b).

27/87L 16/07/87
See under s.86o(3).

119 16/06/87
See under s.108(2).

247/87 26/10/87
Significant contribution - Continuity (of complaint) - Continuity (of treatment) - Pre-existing condition (osteoarthritis) - Elbow - Jurisdiction (powers of Tribunal) [no jurisdiction].

297/87I 15/09/87
Adjournment - Issue setting - Scope of hearing - Case Direction Panel - Case Description - Procedure.

351/87* 23/09/87
See under s.77

434/87* 27/10/87
The worker appealed a decision of the Appeals Adjudicator denying entitlement for a herniated disc in 1984 which the worker claimed resulted from compensable accidents in 1976 or 1981. During the worker's testimony, it became apparent that the disability could have resulted from a work accident subsequent to 1981. However, this accident had never been reported to the employer. The Tribunal determined that it had jurisdiction on the issue of whether the disability resulted from the compensable accidents in 1976 or 1981 but did not have jurisdiction on the issue of whether the disability resulted from the third accident. In making this determination, the Tribunal concluded that the true nature of the case before it was whether the disability resulted from the accidents in 1976 or 1981, which was a major substantive issue in dispute. The true nature of the case could not always be determined by reference to the general issue. On the merits, the Tribunal found that the current low back disability was not related to the worker's head injury in 1981 and that there was a lack of continuity to relate the disability to the 1976 accident. The appeal was denied.

451/87* 10/09/87
See under s.45(5)

510/87I* 16/06/87
The worker appealed a decision of the Appeals Adjudicator denying entitlement beyond April 1985. This decision concerned preliminary matters of adjournment and jurisdiction. The employer notified the Tribunal within 21 days of the Hearing of its intention to call witnesses. The employer had relied on a letter from Tribunal Counsel in May 1986 that there was a 10 day rule and was not aware of the changes in Tribunal practice to a three week rule. The Tribunal granted an adjournment so that the worker should not be prejudiced. Regarding jurisdiction, the Appeals Adjudicator found that the worker was not entitled to benefits after April 1985. He wrote a clarifying letter to the employer that his decision was not dealing with psychological disability. The Tribunal found that the decision did state there was no entitlement for psychological disability and that the Appeals Adjudicator had addressed the issue of both organic and non-organic disability, even though he dealt expressly only with organic disability. Further, considering the real merits and justice of the case, there was no purpose in sending the issue of non-organic disability back to the Board. The Tribunal had jurisdiction.

553/87L* 17/09/87
The worker applied for leave to appeal a decision of the WCB Appeal Board denying entitlement for a neck disability which the worker claimed was related to a compensable accident. In a preliminary matter the Tribunal refused an adjournment requested on a number of grounds. First, the worker's chosen counsel could not appear due to a sudden timetable conflict in District Court, and although other counsel appeared, the worker preferred his regular counsel. The Tribunal found that this was not an exceptional circumstance which would justify an adjournment. Secondly, the worker wanted to make a global representation on four claims. The Tribunal found that it lacked jurisdiction on the other claims since they were still at various stages at the WCB. In any event, global consideration could not be given unless the Tribunal granted leave on the neck disability issue. Thirdly, the worker wanted a psychiatric assessment. The Tribunal found that a claim based on a psychiatric element had not been considered by the Board. On the leave application, the Tribunal found that a co-worker's evidence and a medical report merely confirmed information already before the Appeal Board. Further, there was sufficient evidence to support the Appeal Board's conclusion. Leave to appeal was denied.

584/87* 04/11/87
See under s.45(5)

650/87* 28/09/87
The worker appealed a decision of the Appeals Adjudicator in which the Adjudicator found that the worker was not totally disabled from organic disability. Because there was some evidence of a psychological component the Adjudicator referred the matter to the Claims Adjudication Branch to determine entitlement, if any, for psychological disability. The Tribunal determined that it did not have jurisdiction. The Adjudicator specifically dealt with the issue of non-organic disability by referring it back. This action left undetermined a key aspect of the worker's case. The effect of the referral was to remove the issue of non-organic compensability from the Tribunal's jurisdiction. It was neither reasonable nor appropriate to sever the organic and non-organic components of the claim. The appeal was dismissed without prejudice to appeal after a decision on non-organic disability.

756L* 05/10/87
See under s.86o(2)

9101 10/06/87
Case Direction Panel - Case Description - Jurisdiction (powers of Tribunal) [WCB implicitly dealt with issue] - Evidence (transcript).

Section 86h(1)

260/87I2 28/09/87
Investigation by Tribunal - Medical examination - Consequences of injury - Psychological condition - Mental disorder (neurosis) - Organic evidence of injury, none - Procedure (absent parties).

Section 86k

494R* 16/06/87
The worker applied for reconsideration of Decision No 494 in which leave to appeal was denied. The worker's representative submitted that he was under the mistaken impression that representation was not necessary at preliminary stages of a leave application and that his written submissions would be sufficient to re-open the claim and permit further oral evidence. The Tribunal found no procedural unfairness in the leave procedure. The worker's representative clearly elected to proceed by written submission rather than oral hearing. Those submissions were carefully considered in determining the leave application. The application for reconsideration was denied.

Section 86l

915* 22/05/87
See under s. 52(6).

Section 86l(1)

239/87LM* 10/07/87
The worker applied for leave to appeal a decision of the WCB Appeal Board. In 1971, the worker suffered a compensable fall, for which he lost no time. In 1974 he began to experience pain from cervical disc degeneration. The Appeal Board granted entitlement for the acute episode only from September 1974 to November 1974. By granting entitlement for the acute episode only, the Appeal Board terminated entitlement for any subsequent period. There was good reason to doubt the correctness of the decision since the Appeal Board made no finding to support the termination. On the merits of the appeal, the Tribunal varied the Appeal Board decision by deleting the phrase "for the acute episode only" and the date for termination of benefits. Because of the Appeal Board's decision, there was insufficient information for the Tribunal to determine continuing entitlement. The Tribunal's decision made ongoing entitlement open-ended and, therefore, subject to further consideration by the Board. The Board was directed to adjudicate the claim for benefits subsequent to November 1984.

Section 86m

137/87* 22/07/87
See under s. 1(1)(f)

180/87 25/09/87
See under s.81

223R 09/04/87
See under s.76.

383R* 30/03/87
See under s.76.

467/87* 15/07/87
See under s.81(b).

494R* 16/06/87
See under s.86k.

508/87* 24/07/87
See under s.1(1)(a)(iii).

510/87I* 16/06/87
See under s.86g(2).

688/87* 16/11/87
See under s.81(b)

915* 22/05/87
See under s.52(6).

Section 86n

915* 22/05/87
See under s.52(6).

Section 86o

127/87L 07/04/87
See under s.40(2).

134/87L* 21/07/87
The worker applied for leave to appeal a decision of the WCB Appeal Board as amended by the Board after a recommendation by the Ombudsman. The Appeal Board originally denied entitlement for periods of disability in 1979, 1980, and 1983 for ankylosing spondylitis as not being related to a compensable accident in 1978. The Ombudsman stated that the Appeal Board decision was unreasonable and that entitlement should have been granted on an aggravation basis. The WCB amended the Appeal Board decision by extending entitlement for the initial

acute phase only, which was the period in 1979. The effect of this was to avoid an overpayment for benefits granted by the Appeals Adjudicator. The Tribunal found good reason to doubt the correctness of the Appeal Board decision. There was no reason given for granting entitlement only for the first period of disability. The decision did not appear to follow Board guidelines that there was no limitation on benefits regarding employees with pre-existing symptom free conditions. Leave to appeal was granted with both initial and ongoing entitlement to be considered.

209L 24/07/87
Leave to appeal (good reason to doubt correctness) - Earnings (basis) - Average earnings.

300/87L 13/04/87
Leave to appeal (substantial new evidence) - Medical report - Hearing loss.

307/87L 03/04/87
Leave to appeal (substantial new evidence) - Medical opinion (white finger disease) - Vibrations - Mining - White finger disease.

331/87L 14/07/87
Leave to appeal (good reason to doubt correctness) - Disablement - Specific incident - Steelworker.

352/87L 07/04/87
Leave to appeal (good reason to doubt correctness) - Evidence (sufficient to support Appeal Board's conclusions).

409/87L 05/05/87
Leave to appeal (substantial new evidence) - Leave to appeal (good reason to doubt correctness) - Iatrogenic illness - Knee (torn meniscus).

410/87L* 16/09/87
The worker applied for leave to appeal a decision of the WCB Appeal Board denying entitlement for traumatic neurosis. The Appeal Board accepted the opinion of the Board doctor over that of the worker's treating psychiatrist. However, the Board doctor's report contained a factual error in stating that there was no evidence of any acute or chronic condition that could reasonably be related to employment, whereas in fact the treating psychiatrist's report

contained a good deal of such evidence. Further, the Appeal Board stated that the human rights commission had concluded that the worker may have been discriminated against, whereas in fact the worker's complaint of discrimination was substantiated. This factual error could have led the Appeal Board to discount the effect of the worker's employment on her condition. The majority of the Panel concluded that there was good reason to doubt the correctness of the Appeal Board decision. Leave to appeal was granted. A dissenting Panel member found that all the medical evidence was available to the Appeal Board and that the reporting of the discrimination complaint was not substantial or significant.

412L 13/05/87
Leave to appeal (good reason to doubt correctness) - Evidence - Disablement - Shoulder condition.

434/87* 27/10/87
See under s.86g(2)

477L 12/08/87
Leave to appeal (substantial new evidence) - Deteriorating conditions - Back conditions (disc condition).

494R* 16/06/87
See under s.86k.

505L 29/04/87
See under s.86o(3).

536* 11/09/87
The worker appealed a decision of the Appeal Board pursuant to leave granted in Decision No. 536L. The worker slipped on ice while walking from the employer's factory along a public sidewalk to the employer's parking lot. The worker fell while walking on the public sidewalk or perhaps on the lawn adjacent to the sidewalk. This was the most direct route to the parking lot. Ownership and control of the sidewalk were useful evidentiary points to assist in deciding whether the accident arose out of and in the course of employment. In this case, the worker was travelling the most direct route open to him to get to the parking lot. The fact that the worker had to walk on the public sidewalk did not take away from that fact that his destination was the employer's parking lot. In addition, at the time of the accident the employer thought the sidewalk formed part of its premises. A municipal by-law requiring the employer to keep the sidewalk clear was further indication of the employers

responsibility to provide safe ingress and egress for its workers. The worker was in the course of employment. The appeal was allowed.

581L* 26/05/87
The worker applied for leave to appeal a WCB Appeal Board decision denying benefits for a disability which she claimed was related to a compensable injury and she argued that there had not been a proper WCB claim investigation. The Tribunal could not find any specific deficiency and, in any event, the worker had the opportunity to produce evidence at the hearings. She claimed the Appeal Board reached conclusions of fact which were not supported by the evidence. The Tribunal found the Appeal Board did make errors drawing conclusions from co-worker's evidence about continuity of complaint. The errors were minor rather than significant and not critical to the decision where the decision made no reference to continuity of complaint, and where other (especially medical) evidence was not supportive of ongoing disability. About continuity of medical treatment, the Tribunal found the Appeal Board findings were not inconsistent with one report of treatment dates. There was no evidence for concluding two favourable reports in the WCB file had not been considered by the Appeal Board, though they were not referred to in the decision. Thus there was not good reason to doubt the decision's correctness. The worker also offered six medical reports as substantial new evidence. The Tribunal found three reports did not establish a relationship between symptoms and injury. A fourth report did deal with causation, but it was by a general practitioner and it was made after the disability's onset and was of questionable validity. The other two reports suggested diagnoses of chronic pain syndrome and sympathetic dystrophy, but these reports were tentative and did not contain new physical findings, except findings based on thermographic study about which there is medical debate. The reports either did not mention the worker's degenerative disc disease, did not comment on its effect on her condition, or stated it did not account for the condition. Thus the reports did not constitute substantial new evidence. Leave to appeal was denied.

628L 27/07/87
Leave to appeal (good reason to doubt correctness) - Medical report.

649/87L 12/08/87
Leave to appeal (good reason to doubt correctness) - Evidence.

664/87L 08/07/87
Leave to appeal (good reason to doubt correctness) - Continuity (of complaint) - Continuity (of treatment) - Evidence.

703/87L 13/11/87
Leave to appeal (cumulative grounds) - Medical report - Board doctors.

711/87L* 30/10/87
The worker applied for leave to appeal a decision of the WCB Appeal Board denying entitlement for thoracic outlet syndrome beyond a specific date. The Appeal Board appeared to rely on the opinion of the WCB's medical consultants without setting out the basis for rejecting evidence of the worker's doctors that the continuing condition was related to the compensable accident and a medical text suggesting that occupational stress could result in the symptoms of this condition. There was an appearance of arbitrariness by the failure to set out the basis for rejecting this critical evidence supporting the worker's claim. There was good reason to doubt the correctness of the Appeal Board decision. Leave to appeal was granted.

792/87L 23/09/87
Leave to appeal (substantial new evidence) - Medical report.

834L 02/04/87
Leave to appeal (cumulative grounds) - Medical report - Board doctors - Evidence - Consequences of injury - Neck condition.

845L* 24/07/87
The worker applied for leave to appeal a decision of the WCB Appeal Board denying entitlement for hearing loss. The Appeal Board decided that the worker had not established exposure to sufficient levels of noise. The majority of the Tribunal found that there was good reason to doubt the correctness of the Appeal Board decision since it appeared that the claim was considering individual susceptibility. Leave to appeal was granted. Preston, dissenting, was of the view that the failure of the Appeal Board to make reference to benefit of the doubt for individual susceptibility did not mean that the Appeal Board overlooked it.

Section 86o(1)

756L* 05/10/87
See under s.86o(2)

Section 86o(2)

239/87LM* 10/07/87
See under s.86l(1).

248L 08/06/87
See under s.86o(3).

408/87* 06/05/87
The worker appealed a decision of the WCB's Appeal Tribunal in 1966 that the worker's low back disability was not related to a compensable work injury i 1963. In a preliminary matter, the Tribunal determined that leave to appeal from the decision of the WCB's Appeal Tribunal was not required. Although that decision was by a three-person panel, it was not a final decision of the Board since the worker could have appealed to the Board. The leave requirement in s. 86o(2) was limited to situations where all appeal provisions at the WCB had been exhausted. On the merits, the Tribunal considered the medical reports, inconsistencies in the worker's evidence and the lack of continuity of complaint of back problems and determined that the worker accident caused a chest injury and not a lower back injury. The back condition was likely related to pre-existing non-compensable Marie-Strumpel spondylitis. The appeal was denied.

650L 12/03/87
Leave to appeal (good reason to doubt correctness) [credibility] - Witness - Credibility.

718L* 21/07/87
See under s.86o(3).

756L* 05/10/87
The worker applied for leave to appeal a decision of the WCB Appeal Board dated October 21, 1985. On the issue of whether leave was required to appeal this decision, the majority of the Panel found that, considering s.75 of the Act as well as ss.15 and 38 of the Workers' Compensation Amendment Act, 1984 (No. 2), the Appeal Board retained jurisdiction to determine matters before it and make final decisions with respect to those matters as if it had not been abolished. Accordingly, decisions of the Appeal Board issued subsequent to October 1, 1985 could not be appealed to the Tribunal without leave. In a dissenting opinion on this issue only, McCombie found that leave to appeal was not required. In determining whether to grant leave, the Panel found that it must not simply engage in the process of reassessing the claim on the merits but, rather, must be convinced that there was good reason to doubt the correctness of the decision, as required by statute. In the circumstances, the Appeal Board was not restricted solely to the issue of whether the worker was disabled and whether the disability resulted from a compensable accident. It had jurisdiction to resolve all outstanding matters (in this case, level of benefits) for reasons of expediency and finality. However, the principles of

natural justice required that the parties be given an opportunity to introduce evidence and make submissions on all issues. Further, the Appeal Board appeared to apply the benefit of the doubt in favour of the worker on the issue of entitlement, but then decided the issue of level of disability against the worker because the benefit of doubt had been extended with respect to the first issue. This was an improper application of the benefit of doubt principle. On the basis of these two matters combined, leave to appeal was granted.

Section 86o(3)

27/87L 16/07/87
Leave to appeal (good reason to doubt correctness) - Aggravation - Pre-existing condition (osteoarthritis) - Adjournment - Notice (of hearing) - Jurisdiction (powers of Tribunal) [no jurisdiction].

38/87L 30/10/87
See under s.3(3)

55/87L 06/04/87
Leave to appeal (good reason to doubt correctness) - Hearing loss - Evidence - - Steelworker.

125/87L 08/04/87
Leave to appeal (good reason to doubt correctness) - Witness - Evidence.

164/87L* 22/07/87
The applicant applied for leave to appeal a decision and reconsideration by the WCB Appeal Board denying dependency benefits. The worker died as a result of renal failure and anemia. The Appeal Board found that the worker's death was not medically established as being related to lead poisoning and that the evidence did not support exposure to hazardous levels of lead during employment. The Tribunal found that an opinion of the worker's granddaughter, that the worker died of exposure to toxic substances, did not constitute substantial new evidence. Regarding good reason to doubt correctness, the medical reports did not support or establish lead poisoning as the source of renal failure or anemia. However, there was no material in the WCB file regarding the issue of exposure to lead in the workplace. The Tribunal confirmed that the worker's claim file was to be viewed as containing all documents in regard to the claim. There was good reason to doubt the correctness of the Appeal Board decision. Leave to appeal was granted.

166/87L 24/04/87
Leave to appeal (good reason to doubt correctness) [evidence to support Appeal Board's conclusions] - Disablement - Repetitive movement - Board doctors - Back conditions (disc lesion) - Automotive industry.

181/87L* 18/06/87
The worker applied for leave to appeal a decision of the WCB Appeal Board denying entitlement for carpal tunnel syndrome. The worker was employed as an assembler since 1973. She was diagnosed as having carpal tunnel syndrome in July 1981, shortly after returning to work from a sprained thumb suffered in May 1981. The worker submitted a journal article stating that peak times for injury were at the onset of employment and again several years later. The Tribunal decided that the article was not substantial new evidence since it did not refer to the specific source of data on which its conclusions were based and, further, it referred to onset of upper limb disorders resulting from poorly designed work places. The Tribunal also found that there was not good reason to doubt the correctness of the Appeal Board decision. The Tribunal did not attach significance to the Appeal Board's failure to deal with flexion/extension aspects of repetitive movement of the worker's job. There was no error in finding that there was no significant change in the worker's job. Since there was evidence before the Appeal Board to support its conclusions, the benefit of the doubt principle was not applicable. Leave to appeal was denied.

229/87L 12/05/87
Leave to appeal (substantial new evidence) - Leave to appeal (good reason to doubt correctness) - Medical report - Psychological condition.

248L 08/06/87
Leave to appeal (good reason to doubt correctness) - Leave to appeal (substantial new evidence) - Medical report - Credibility - Evidence.

272/87L 27/05/87
Leave to appeal (substantial new evidence) - Leave to appeal (good reason to doubt correctness) - Consequences of injury - Medical report - Strains and sprains - Heart condition - Hernia (inguinal) - Police.

278/87 23/04/87
Leave to appeal (good reason to doubt correctness) [failure to grant opportunity to respond to evidence] - Leave to appeal (substantial new evidence) [medical literature] - Board doctors - Medical report - Vibrations - White finger disease - Mining.

308/87L 09/04/87
Leave to appeal (good reason to doubt correctness) - Leave to appeal (substantial new evidence) - Medical report - Evidence (lack of disclosure by Appeal Board) - Procedure (Appeal Board).

313/87L* 10/06/87
The worker applied for leave to appeal a decision of the Appeal Board denying a retroactive temporary supplement to the worker's pension. At the WCB, the matter was referred directly to the Appeal Board as a reconsideration of its earlier decision regarding the worker's pension. The Appeal Board found no new evidence on which to reconsider. Three weeks later the Pension Section, which had been conducting a review of the worker's claim, stated that it would have increased the worker's supplementary benefits. The Tribunal found good reason to doubt the correctness of the Appeal Board decision. Bypassing the full appeal structure may not, in and of itself, give good reason to doubt the correctness of the decision. However, in this case the Appeal Board did not appear to fully investigate or consider the matter seriously. The only thorough review was by the Pension Section but it felt it had no authority to process an adjustment because of the Appeal Board decision. The procedure resulted in a denial of natural justice. Leave to appeal was granted.

349/87L* 04/09/87
The worker's widow applied for leave to appeal a decision of the WCB Appeal Board denying dependency benefits resulting from the worker's death from lung cancer. The worker was employed for about 33 years in the smelter/furnace area of the plant. The Appeal Board found no evidence to establish exposure to asbestos in accordance with Board guidelines. The Appeal Board appeared to consider evidence only of airborne asbestos exposure from the sintering area of the plant which was some distance away. The Appeal Board appeared to ignore critical evidence from the worker and co-workers of direct exposure in the smelter/furnace area from asbestos mitts, asbestos-lined furnace, asbestos rolls to protect furnace operators and asbestos powder used in mixing mortar. Further, there were inherent problems in a 1978 mortality study that was considered by the Appeal Board. Leave to appeal was granted.

350/87L* 13/04/87
The worker applied for leave to appeal a WCB Appeal Board decision and subsequent reconsideration decisions denying entitlement for white finger disease and carpal tunnel syndrome. The worker submitted a report from a renowned specialist in hand arm vibration syndrome which concluded that the

worker had sufficient exposure to cause an average person to develop the condition and which directly related the worker's condition to work exposure. The worker had requested that the Appeal Board obtain a report from this specialist, but the request was denied. The report constituted substantial new evidence. The report was also of sufficient weight so as to raise good reason to doubt the correctness of the decision. Leave to appeal was granted.

379/87L 01/06/87
Leave to appeal (good reason to doubt correctness) - Leave to appeal (substantial new evidence) - Pre-existing condition (ankylosing spondylitis) - Aggravation - Medical opinion (ankylosing spondylitis) - Back conditions (ankylosing spondylitis).

383/87L 29/05/87
Leave to appeal (substantial new evidence) - Leave to appeal (good reason to doubt correctness) - Medical report - Board doctors - Evidence.

423/87L 29/09/87
Leave to appeal (substantial new evidence) - Leave to appeal (good reason to doubt correctness) - Evidence - Delay.

464L 13/04/87
Leave to appeal (good reason to doubt correctness) - Leave to appeal (substantial new evidence) - Medical treatment - Iatrogenic illness - Head (headaches).

497/87L* 26/05/87
The worker applied for leave to appeal a decision of the Appeal Board denying entitlement for a low back disability in 1983 which the worker claimed was related to a compensable accident in 1979. The Appeal Board relied on a medical report that the worker had a history of back problems prior to the accident in 1979. The Tribunal found good reason to doubt the correctness of the Appeal Board decision, since the doctor who wrote the medical report clarified his report to state that the worker said later that he did not have prior problems with his back and further, that the worker's work record corroborated what the worker said. In addition, co-workers testified that the worker did not complain of back problems prior to the accident. Leave to appeal was granted.

505L 29/04/87
Jurisdiction (powers of Tribunal) [leave to appeal] - Leave to appeal (substantial new evidence) - Leave to appeal (good reason to doubt correctness).

539L 28/09/87
Leave to appeal (good reason to doubt correctness) - Significant contribution - Pensions (disability) - Death - Asbestos - Asbestosis - Heart condition (heart attack).

552/87L 09/11/87
Leave to appeal (substantial new evidence) - Leave to appeal (good reason to doubt correctness) - Allergy - Dust.

650L 12/03/87
See under s.86o(2).

691/87L 2/11/87
Leave to appeal (substantial new evidence) - Leave to appeal (good reason to doubt correctness) - Continuity (of complaint) - Continuity (of treatment) - Medical report.

718L* 21/07/87
The worker applied for leave to appeal a decision of the WCB Appeal Board dated January 1986 denying entitlement for a non-work injury which the worker claimed was related to a compensable accident and denying a temporary supplement to the worker's pension. The Tribunal agreed with Decision No. 911L that leave to appeal was required even though the Appeal Board decision was released after October 1, 1985. Regarding the supplement, the Appeal Board erred on the facts by finding that the worker had not suffered a wage loss when evidence established that the worker was earning less than before the compensable accident. Leave to appeal was granted on this issue. Regarding the non-work injury, the Appeal Board found that the preponderance of evidence did not support the worker and that the worker was not a credible witness. The Tribunal generally would be reluctant to overturn an Appeal Board decision as to credibility, but will look behind the decision for evidence to support the finding. In this case, the Tribunal found that the worker was severely limited in his ability to work and that his regular work was clearly beyond his physical capabilities. The employer was a large manufacturer with numerous modified jobs, but apparently did not consider the worker fit to perform any of these jobs. The worker was unable to perform

regular or modified work. He was therefore temporarily totally disabled. Although the worker suffered from other health problems, there was no evidence that these other problems contributed significantly to his ability to work during the period in question. The appeal was allowed.

756L* 05/10/87
See under s.86o(2)

766LA 21/07/87
See under s.80.

782L 26/10/87
Leave to appeal (good reason to doubt correctness) - Medical report - Benefit of the doubt - Overpayment - Jurisdiction (powers of tribunal) [referrals to WCB with directions].

876/87L 13/09/87
Leave to appeal (good reason to doubt correctness).

890/87L* 13/10/87
The worker brought an application for leave to appeal a decision of the Appeal Board. The Tribunal found that the medical report submitted by an ophthalmologist who examined the worker constituted substantial new evidence. The Tribunal noted that the report, which set out detailed criticism of the diagnostic approach taken by other physicians who had examined the worker and gave a lengthy analysis in support of the ophthalmologist's finding of a different diagnosis, added substantially to the information available regarding the worker's condition. Leave to appeal was granted.

911L2 17/07/87
Leave to appeal (substantial new evidence) - Leave to appeal (good reason to doubt correctness) - Medical report - Evidence - Board doctors - Bias.

Section 86o(3)(a)

150/87L 28/05/87
See under s.22 repealed.

152/87L 15/06/87
Leave to appeal (substantial new evidence) - Leave to appeal (good reason to doubt correctness) - Medical report - Evidence - Fibrositis - Ombudsman.

327/87L 05/06/87
Leave to appeal (substantial new evidence) - Leave to appeal (good reason to doubt correctness) - Standard of proof - Witness - Psychiatric condition - Back conditions (lower back).

904/87L 06/11/87
Leave to appeal (substantial new evidence) - Leave to appeal (good reason to doubt correctness) - Hearing loss.

Section 86o(3)(b)

201L 20/11/87
Leave to appeal (good reason to doubt correctness) - Credibility.

446/87L 18/09/87
Leave to appeal (good reason to doubt correctness) - Consequences of injury - Evidence - Delay.

766L* 16/12/86
The worker applied for leave to appeal a decision of the WCB Appeal Board denying entitlement for a back disability. The Appeal Board based its decision on delay in reporting, lack of unusual occurrence and inconsistencies and discrepancies in evidence. The Tribunal found that the delay of two days in reporting was minor and that the Appeal Board did not appeal to consider the possibility of disablement. However, error by the Appeal Board is not necessarily good reason to doubt the correctness of their decision. Considering the discrepancies and inconsistencies in evidence, the Appeal Board made a finding of credibility against the worker. Coupled with the delay in reporting and absence of a specific witnessed incident, the Appeal Board reached its conclusions. In the absence of compelling reasons, the Tribunal should not interfere with the Appeal Board's findings as to credibility. Further the benefit of the doubt principle did not apply where the Board was able to make its decision on the balance of probabilities. Leave to appeal was denied.

904/87L 06/11/87
See under s.86o(3)(a)

909L 14/10/87
Leave to appeal (good reason to doubt correctness) - Total temporary benefits - Suitable employment - Rehabilitation (of worker) - Available employment - Thumb.

992/87L 20/10/87
Leave to appeal (good reason to doubt correctness) - Continuity (of complaint) - Continuity (of treatment) - Neck condition (disc disease).

Section 91(1)

46/87* 30/04/87
(Murphy et al v. Conway)
See under s.15.

741* 05/03/87
(Hellam et al. v. Rosser et al.)
See under s.15.

Section 91(7)

255/87* 04/05/87
The employer appealed a decision of the Hearings Officer confirming an assessment for the years 1981 to 1983 under s. 91(7) of the Act. The employer met the criteria for a special assessment set out in s. 6(1) of Reg. 951. The employer had recently established a safety programme. The Tribunal found that s. 9(7) of the Act. and s. 6(1) of Reg. 951 were intended to protect safety-conscious employers from long-term poor performance of less safety-conscious employers. According to Board policy to eliminate a special assessment, the employer must implement an effective safety programme. In this case, the performance of the employer for the years 1984 to 1986 does not indicate that the programme was successful. If the safety programme was successful, it might be appropriate to cancel any special assessment arising out of the employer's performance during the years 1984 to 1986. However it would not be appropriate to cancel the special assessment for the years 1981 to

1983 since it would be inequitable to pass on the costs of the employer's poor performance to other members of the rate group. The appeal was denied.

598/87* 19/11/87

The employer appealed a decision of the Hearings Officer confirming a penalty assessment due to the employer's accident experience from 1980 to 1982. The employer sought relief of the basis of the health and safety program it had implemented since receipt of the notice of assessment. The purposes of the penalty assessment mechanism are to: 1) ensure that individual employers do not impose unfair financial burdens with respect to accident costs on other employers; 2) provide a penalty intended to achieve both general and specific deterrence from business operations which create unsafe conditions and 3) provide incentives which recognize efforts made by employers to improve safety conditions. The area of penalty assessments and applications for relief from penalty is an area in which the Board has a certain discretion but it is not an area in which the Board has exclusive expertise. In this area, the Tribunal should give due consideration to the opinion of the Board. In light of the Board's policy, and in light of the real merits and justice of the case, it should determine whether the Board's conclusion was correctly formed and whether it agrees with that conclusion. The Tribunal was satisfied that the Board policy reflected the intent of the legislation. In applying the Board policy, it is appropriate to consider: 1) the degree to which the employer has indicated a genuine acceptance of its obligation to create a safe working environment as is reasonable, given the nature of the business; 2) the appropriateness and effectiveness of the program; 3) the employer's efforts to work with a safety association; 4) the input of the workers; 5) the reduction in frequency and severity of accidents and 6) how rapidly change has been made. In this case, the number of accidents occurring in 1984, 1985 and 1986 remained

high. The severity of accidents decreased, but not sufficiently to warrant relief for the period under review. The appeal was denied.

Section 95

741* 05/03/87
(Hellam et al. v. Rosser et al.)
See under s.15.

Section 108(2)

119 16/06/87
Pensions (disability) - Supplements (to awards) - Second Injury and Enhancement Fund - Psychological condition - Hand - Jurisdiction (powers of Tribunal) [referrals to WCB with directions] - Jurisdiction (powers of Tribunal) [WCB implicitly dealt with issue] - Adjournment.

Section 122

235* 16/06/87
The worker appealed a decision of the Appeals Adjudicator denying entitlement for hearing loss. The worker was a steelworker who was exposed to noise at 85 decibels or more for approximately 27 years. The Claims Services Division Manual, s. 122, p. 270, Directive 19, provided entitlement for five years exposure in the 90 decibel range but that the five year requirement could be reduced in the event of exposure levels exceeding 90 decibels. It appeared logical to the Tribunal, then, that substantial increase in the period of exposure would be a factor to consider under para. 2.2 of Directive 19 regarding individual cases. In the circumstances, it was more probable than not that the hearing loss resulted from noise exposure at work. The appeal was allowed.

Section 122(1)

388M 09/11/87
Industrial disease (silicosis) - Chronic obstructive lung disease - Mining - Silica dust.

396/87 21/05/87
Industrial disease (white finger disease) - Medical report - Etiology - Vibration (white finger disease) - Vibrations - Mining - White finger disease - Jurisdiction (powers of Tribunal) [referrals to WCB with directions).

533L* 16/06/87
The worker applied for leave to appeal a decision of the WCB Appeal Board denying entitlement for a low back disability. On an appeal to the Appeal Board regarding continuing entitlement, the Appeal Board decided to investigate initial entitlement. An investigation report was sent to the parties. The parties made submissions but the submissions were not sent to the opposing parties and the hearing was not reconvened. The Tribunal found good reason to doubt the decision of the Appeal Board based on the cumulative effect of the following: 1) in finding that the worker was doing his ordinary work prior to the onset of disability, the Appeal Board failed to consider a disablement arising out of and in the course of employment, 2) by bypassing the lower levels of appeal, the Appeal Board failed to follow its own procedure, thereby depriving the parties of the benefit of the ordinary stages of investigation and appeal, and 3) the Appeal Board rejected the worker's written submissions in response to the investigator's report without reasons. Point number 1, particularly when combined with the other circumstances, lead the Tribunal to doubt the correctness of the decision. Leave to appeal was granted.

533/87* 05/06/87
The worker appealed a decision of the Hearings Officer denying entitlement for hearing loss. The worker was a steelworker who had worked in a noisy environment for 33 years. The worker did not meet the exposure criteria in the Board guidelines since his continuous noise level exposure was about 80 decibels. The employer submitted that the worker should not be considered as an exception since his exposure did not come close to meeting the criteria. The Tribunal found that medical reports were of the opinion that the hearing loss was noise-induced. The worker was exposed to intermittent noise levels at the 90 decibel range for about one hour per day for 28 years. Considering the individual case, it was more likely than not that the hearing loss resulted from noise exposure in the workplace. The appeal was allowed.

Section 122(5)

57/87* 19/05/87
See under s.1(1)(a)(iii).

Section 122(9)

963/87* 04/11/87
The worker appealed a decision of the Hearings Officer denying entitlement for phosphoric poisoning. The Hearings Officer appeared to rely on a number of reports including a report from the Ministry of Labour that occupational exposure would not be anticipated. The Tribunal found that the worker did suffer from the industrial disease of phosphoric poisoning. The report from the Ministry of Labour was lacking in several respects. It did not appear to appreciate fully the working conditions and extent of exposure to chemicals. A further laboratory test resulted in one high reading and one normal reading. Although the WCB dismissed the high reading as probably being in error, it appeared equally possible that the normal reading was in error. There was no evidence to the contrary to displace the presumption that the worker's condition was due to the nature of his employment. The appeal was allowed.

Section 132

137/87* 22/07/87
See under s. 1(1)(f)

REGULATIONS UNDER THE WORKERS' COMPENSATION ACT

REGULATION 951

SECTION 6(1)

255/87* 04/05/87
See under s.91(7)

SECTION 6(3)

255/87* 04/05/87
See under s.91(7).

SCHEDULE 1

46/87* 30/04/87
(Murphy et al v. Conway)
See under s.15.

270/87* 09/04/87
(Dzulynski v. White et al)
See under s.15.

741* 05/03/87
(Hellam et al. v. Rosser et al.)
See under s. 15

820 19/10/87
(Velocci et al. v. WTB Inc. et al.)
See under s.15

963/87 04/11/87
See under s.122(9)

SCHEDULE 3

388M 09/11/87
See under s.122(1)

OTHER STATUTES CONSIDERED

CANADIAN CHARTER OF RIGHTS AND FREEDOMS

SECTION 15

436* 29/04/87
(Rocha et al. v. Yanez)
See under s. 15 of the Workers' Compensation Act.

560* 22/04/87
(Van der Zalm et al v. Dobson et al.)
See under s. 15 of the Workers' Compensation Act.

COURTS OF JUSTICE ACT,1984 s.o. 1984 c.11

SECTION 1

53/87* 15/05/87
(Welland County General Hospital v. Ontario Nurses Association)
See under s.15. of the Workers' Compensation Act.

CRIMINAL CODE R.S.C. 1970 C-34 as amended

SECTION 178.11(1)

467/87* 15/07/87
See under s.81(b) of the Workers' Compensation Act.

FAMILY LAW REFORM ACT R.S.O. 1980 c. 152 as amended

SECTION 14

137/87* 22/07/87
See under s. 1(1)(f) of the Workers' Compensation Act.

SECTION 60

729/87 14/10/87
See under s. 15 of the Workers' Compensation Act.

741* 05/03/87
(Hellam et al. v. Rosser et al.)

958/87 05/11/87
(Klich et al. v. Di Maria et al.)
See under s. 15 of the Workers' Compensation Act.

SECTION 60(1) [NOW FAMILY LAW ACT, S.61(1)]

276/87 08/04/87
(Rosella et al. v. Wake et al.)
See under s.15. of the Workers' Compensation Act.

298 06/07/87
(Bouius et al. v. Van Houten et al.)
See under s. 15 of the Workers' Compensation Act.

320* 16/04/87
(510504 Ontario Ltd. et al. v. Brancato et al.)
See under s. 15 of the Workers' Compensation Act.

443/87 22/05/87
(Pisana et al. v. Adradqna et al.)
See under s.15. of the Workers' Compensation Act.

HEALTH DISCIPLINES ACT, R.S.O. 1980 c.196

704/87 19/10/87
See under s.77 of the Workers' Compensation Act.

HEALTH INSURANCE ACT R.S.O. 1980 c.197

SECTION 144

541 17/06/87
Consequences of injury - Aggravation - Continuity (of complaint) - Continuity (of treatment) - Knee (chondromalacia) - Standing - Evidence.

HIGHWAY TRAFFICE ACT, R.S.O. 1980 c.198

SECTION 1(1)

53/87* 15/05/87
(Welland County General Hospital v. Ontario Nurses Association)
See under s.15. of the Workers' Compensation Act.

SECTION 31

53/87* 15/05/87
(Welland County General Hospital v. Ontario Nurses Association)
See under s.15. of the Workers' Compensation Act.

SECTION 166(1)

389* 22/05/87
(Trepanier et al. v. Latimer et al.)
See under s. 15. of the Workers' Compensation Act.

INTERPRETATION ACT, R.S.O. 1980 c.11

SECTION 1(1)

53/87* 15/05/87
(Welland County General Hospital v. Ontario Nurses Association)
See under s.15. of the Workers' Compensation Act.

SECTION 10

137/87* 22/07/87
See under s. 1(1)(f) of the Workers' Compensation Act.

SECTION 17

137/87* 22/07/87
See under s. 1(1)(f) of the Workers' Compensation Act.

SECTION 18

137/87* 22/07/87
See under s. 1(1)(f) of the Workers' Compensation Act.

SECTION 19

137/87* 22/07/87
See under s. 1(1)(f) of the Workers' Compensation Act.

SECTION 31

53/87* 15/05/87
(Welland County General Hospital v. Ontario Nurses Association)
See under s.15. of the Workers' Compensation Act.

LABOUR RELATIONS ACT, R.S.O. 1980 c.228

SECTION 44

53/87* 15/05/87
(Welland County General Hospital v. Ontario Nurses Association)
See under s.15. of the Workers' Compensation Act.

OMBUDSMAN ACT R.S.O. 1980 c.325

GENERAL

156/87* 15/05/87
See under s.77. of the Workers' Compensation Act.

191/87 10/06/87
See under s.77. of the Workers' Compensation Act.

432/87* 17/05/87
See under s.77. of the Workers' Compensation Act.

ONTARIO HUMAN RIGHTS CODE, R.S.O. 1980 c.340

GENERAL

432/87* 17/05/87
See under s.77. of the Workers' Compensation Act.

FREEDOM OF INFORMATION AND PROTECTION AND PRIVACY ACT, 1987 S.O. 1987 c.25

GENERAL

688/87* 16/11/87
See under s.81(b). of the Workers' Compensation Act.

PROVINCIAL OFFENCES ACT, R.S.O. 1980 c.400

GENERAL

156/87* 15/05/87
See under s.77. of the Workers' Compensation Act.

191/87 10/06/87
See under s.77. of the Workers' Compensation Act.

432/87* 17/05/87
See under s.77. of the Workers' Compensation Act.

704/87* 19/10/87
See under s.77. of the Workers' Compensation Act.

PUBLIC COMMERCIAL VEHICLES ACT, R.S.O. 1980 c.407

GENERAL

820 19/10/87
(Velocci et al. v. WTB Inc. et al.)
See under s.15. of the Workers' Compensation Act.

RIGHTS OF LABOUR ACT, R.S.O. 1980 c.456

SECTION 3

53/87* 15/05/87
(Welland County General Hospital v. Ontario Nurses Association)
See under s.15. of the Workers' Compensation Act.

SUCCESSION LAW REFORM ACT, 1977 S.O. 1977 c.40

SECTION 64

137/87* 22/07/87
See under s. 1(1)(f) of the Workers' Compensation Act.

SECTION 69 (1)(a)

137/87* 22/07/87
See under s. 1(1)(f) of the Workers' Compensation Act.

SUCCESSION LAW REFORM ACT, 1980 c.488

137/87* 22/07/87
See under s. 1(1)(f) of the Workers' Compensation Act.

WORKMEN'S COMPENSATION AMENDMENT ACT, 1975 S.O. 1975 c.47

SECTION 2

547 16/10/87
See under s.11 of the Workers' Compensation Act.

SECTION 10

547 16/10/87
See under s. 11 of the Workers' Compensation Act.

SECTION 17

547 16/10/87
See under s. 11 of the Workers' Compensation Act.

WORKMEN'S COMPENSATION AMENDMENT ACT, 1984 (No. 2) S.O. 1984 c.58

SECTION 15(2)

756L* 05/10/87
See under s.86o(2) of the Workers' Compensation Act.

SECTION 38

505L 29/04/87
See under s.86o(3). of the Workers' Compensation Act.

756L* 05/10/87
See under s. 86o(2) of the Workers' Compensation Act.

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